

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**JERSEY SHORE UNIVERSITY MEDICAL
CENTER, HACKENSACK MERIDIAN
HEALTH**

and

**HEALTH PROFESSIONALS AND ALLIED
EMPLOYEES, AFT, AFL-CIO**

Case No. 22-RC-263932

**JERSEY SHORE UNIVERSITY MEDICAL CENTER'S REQUEST FOR REVIEW
OF REGIONAL DIRECTOR'S ORDER DIRECTING MAIL BALLOT ELECTION**

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TABLE OF CONTENTS

| | Page |
|--|-------------|
| I. INTRODUCTION. | 2 |
| II. PROCEDURAL HISTORY..... | 3 |
| III. FACTUAL BACKGROUND. | 5 |
| IV. ARGUMENT..... | 8 |
| A. Standard of Review. | 8 |
| B. This Case Presents an “Appropriate Proceeding” for the Board to Explain the Circumstances Under Which a Manual Election Should be Directed Based on the Local Circumstances, Including the Applicability to Such a Determination of GC Memorandum 20-10..... | 9 |
| C. The RD’s Order Unreasonably Departed from Established Board Precedent and Misapplied Settled Board Law. | 10 |
| D. The RD’s Order Contains Numerous Clearly Erroneous Findings of Substantial Factual Issues. | 12 |
| 1. The RD Misunderstood and Misrepresented Current New Jersey Executive Orders..... | 12 |
| 2. The RD Erroneously Interpreted COVID Data. | 15 |
| 3. The RD Either Misunderstood or Ignored the Company’s Proposed Election Logistics and Protocols..... | 15 |
| 4. The RD’s Decision is Filled with Inaccurate and Ill-Reasoned Conclusions About COVID-19..... | 17 |
| 5. The RD Arbitrarily Precluded JSUMC from Presenting Relevant Expert Medical Testimony Concerning the Risk of COVID-19 Transmission under JSUMC’s Election Plan..... | 19 |
| V. CONCLUSION..... | 20 |

TABLE OF CONTENTS

| | Page |
|--|-------------|
| I. INTRODUCTION. | 2 |
| II. PROCEDURAL HISTORY..... | 3 |
| III. FACTUAL BACKGROUND. | 5 |
| IV. ARGUMENT..... | 8 |
| A. Standard of Review. | 8 |
| B. This Case Presents an “Appropriate Proceeding” for the Board to Explain the Circumstances Under Which a Manual Election Should be Directed Based on the Local Circumstances, Including the Applicability to Such a Determination of GC Memorandum 20-10..... | 9 |
| C. The RD’s Order Unreasonably Departed from Established Board Precedent and Misapplied Settled Board Law. | 10 |
| D. The RD’s Order Contains Numerous Clearly Erroneous Findings of Substantial Factual Issues. | 12 |
| 1. The RD Misunderstood and Misrepresented Current New Jersey Executive Orders..... | 12 |
| 2. The RD Erroneously Interpreted COVID Data. | 15 |
| 3. The RD Either Misunderstood or Ignored the Company’s Proposed Election Logistics and Protocols..... | 15 |
| 4. The RD’s Decision is Filled with Inaccurate and Ill-Reasoned Conclusions About COVID-19..... | 17 |
| 5. The RD Arbitrarily Precluded JSUMC from Presenting Relevant Expert Medical Testimony Concerning the Risk of COVID-19 Transmission under JSUMC’s Election Plan..... | 19 |
| V. CONCLUSION..... | 20 |

TABLE OF AUTHORITIES

| | Page(s) |
|--|----------------|
| Cases | |
| <i>Ceva Logistics US., Inc.</i> , 357 NLRB 628 (2011) | 5 |
| <i>Duke Univ.</i> , No. 10-RC-187957, 2017 WL 971643 (NLRB Feb. 23, 2017) | 10 |
| <i>Halliburton Services</i> , 265 NLRB 1154 (1982) | 5 |
| <i>Manchester Knitted Fashions, Inc.</i> , 108 NLRB 1366 (1954) | 5 |
| <i>Nouveau Elevator Industries</i> , 326 NLRB 470 (1998) | 5, 10 |
| <i>Pace Southeast Michigan</i> , No. 07-RC-257046, 2020 WL 4584253 (NLRB Aug. 7, 2020) (unpublished) | 3, 9 |
| <i>Rocky Mountain Planned Parenthood, Inc.</i> , No. 27-RC-205940, 2018 WL 1806771 (NLRB Apr. 16, 2018) | 10 |
| <i>Roseland Community Hospital</i> , 2020 NLRB LEXIS 296 (May 26, 2020) (unpublished) | 9 |
| <i>San Diego Gas & Elec.</i> , 325 NLRB 1143 (1998) | 10, 11, 15 |
| <i>Sutter W. Bay Hosps.</i> , 357 NLRB 197 (2011) | 10 |
| <i>Thompson Roofing, Inc.</i> , 291 NLRB 743 (1988) | 10 |
| Other Authorities | |
| 29 C.F.R. 102.67(d) | 9 |
| Executive Order No. 104 | 13 |
| Executive Order No. 107 | 13 |
| Executive Order No. 122 | 13 |
| Executive Order No. 157 | 13 |
| Executive Order No. 158 | 13 |

TABLE OF AUTHORITIES

| | Page(s) |
|-------------------------------|----------------|
| Executive Order No. 163 | 13 |
| Executive Order No. 173 | 14 |
| Executive Order No. 175 | 13 |
| Executive Order No. 177 | 13 |
| Executive Order No. 180 | 15 |
| Executive Order No. 181 | 13 |
| Executive Order No. 183 | 13 |

Since the first days of the COVID-19 pandemic in New Jersey, there has been one clarion call: *Follow the Data*. In the early days of the pandemic, the data painted a bleak picture – hundreds of thousands of New Jersey were sick, thousands of were dying, and COVID-19 infections were rampant. Over the last six months, the pandemic, thankfully, has relented and its impact, particularly on the campus of Employer Jersey Shore University Medical Center, Hackensack Meridian Health (“JSUMC” or “Hospital”) has changed dramatically. The rate of transmission of COVID-19 throughout New Jersey and Monmouth County, where JSUMC is located, also has decreased dramatically, as have the risks for JSUMC’s team members making up the voting unit in this case, all of whom have reported for work daily throughout the pandemic.

As the pandemic evolved, so did the science. Inexplicably and arbitrarily, the Regional Director of Region 22, David E. Leach (“RD”), not only failed to follow the science or the data in his consideration of this case, he precluded JSUMC from offering the expert medical testimony – *the science* – of its chief infection and disease control officer, who would have testified that JSUMC’s proposed election plan was safe and appropriate under the current state of the pandemic. Put simply, the Regional Director’s Order is based on fear, not facts. His reliance on outdated data and his personal beliefs of the risks of COVID-19 transmission without taking into account the science-based mitigation efforts JSUMC proposed under the specific circumstances of this election plan is the embodiment of prejudicial error.

For these reasons and those discussed below, JSUMC, pursuant to Section 102.67 of the National Labor Relation Board’s (“NLRB” or “Board”) Rules and Regulations (“Rules”), respectfully submits this Request for Review of the Regional Director’s Decision and Direction of a Mail-Ballot Election, dated September 15, 2020, (“DDE” or “Order”) (attached hereto

Exhibit 1), directing that mail ballots be mailed to members of the voting unit on October 2, 2020 (“Election”).¹

I. INTRODUCTION.

The Board should grant JSUMC’s Request for Review because the RD , abused his discretion in ordering a mail-ballot election in this case. The record admitted at the hearing – and the evidence he arbitrarily excluded – directly refutes the RD’s conclusion that an in-person, manual ballot election cannot be conducted on JSUMC’s campus in the near future. The RD’s Order misconstrues or simply ignores record facts about JSUMC’s election plan, the threat currently presented by COVID-19 on JSUMC’s campus and the import of various executive orders issued by New Jersey Governor Philip D. Murphy. The RD also misapplied the Board’s established law on when a potential voting unit is “scattered” and, consequently, a mail ballot election is appropriate.

These manifest errors demonstrate that the RD approached this case with a fixed result in mind – he intended to direct a mail ballot election regardless of the data or the science. In so doing, he disregarded or refused to consider contrary expert medical testimony to conclude that an in-person election could not be conducted safely on the campus of an acute care hospital, even though JSUMC has operated under a comprehensive COVID-19 response plan (Employer Exhibit (“EX”)-11) and its team members had reported to work daily during the pandemic.

JSUMC’s Request for Review presents several compelling grounds on which the Board should grant review, in accordance with Section 102.67(d)(1)-(4) of the Board’s Rules:

1. The Board should grant review of the RD’ Order because this case presents an “appropriate proceeding” for the Board to explain “whether manual elections should be directed based on the circumstances then prevailing in the region charged with

¹ Concurrent with the filing of this Request for Review, JSUMC is filing an Emergency Motion to Stay the Election with supporting facts and legal arguments contained herein.

conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.” *Pace Southeast Michigan*, No. 07-RC-257046, 2020 WL 4584253, at *1, n.1 (NLRB Aug. 7, 2020) (unpublished).

2. The RD’s Order raises a substantial question of law because it: (a) unreasonably departed from established Board precedent in favor of in-person, manual elections over mail-ballot elections; and (b) misapplied the Board’s law concerning when a voting unit is “scattered,” thereby justifying a mail ballot election. Exhibit 1, at 5-8.
3. The RD’s Order contains numerous clearly erroneous findings on substantial factual issues concerning the risk of COVID-19 transmission under JSUMC’s election plan, which prejudiced the Hospital.
4. The RD arbitrarily precluded JSUMC from presenting relevant expert medical testimony concerning the risk of COVID-19 transmission under JSUMC’s election plan, which prejudiced the Hospital.

For these reasons, JSUMC respectfully requests that the Board grant its Request for Review and accompanying Emergency Motion to Stay.

II. PROCEDURAL HISTORY.

On July 31, 2020, Health Professionals and Allied Employees, AFT/AFL-CIO (“HPAE” or “Union”) filed the instant RC Petition and requested that a mail ballot be conducted in the petitioned for unit. On August 14, 2020, JSUMC filed its Statement of Position stating its desire for an in person, manual election. HPAE filed its Responsive Statement of Position on August 19, reiterating its desire for a mail ballot election.

On August 27, 2020, Board Agent Eric Pomianowski, designated as the Hearing Officer (“HO”), conducted a representation case hearing in this case. The sole issue for the hearing was whether the RD should direct an in-person, manual ballot election or a mail ballot election. At the hearing, JSUMC reiterated its pre-hearing position that it intended to offer two fact witnesses, Douglas Campbell, its Director of Operations and Risk Management, and Dr. Jerry Zuckerman, its Vice President, Infection Prevention and Control, to present and explain its

proposed election plan and to provide expert medical testimony concerning the science behind the risk of transmission of COVID-19 under that plan.

HO Pomianowski, after consulting with Regional management, precluded JSUMC from presenting either of its witnesses on the ground that election mechanics are non-litigable and committed to the RD's discretion. Hearing Transcript ("Tr.") 43:8-25. After indicating its intention to file a Request for Special Permission to Appeal the HO's ruling on this issue ("Witness Testimony Special Appeal") on this issue, JSUMC's counsel made offers of proof to summarize the testimony each would witness would have presented if permitted to testify. JSUMC also introduced 12 exhibits relating to its election plan and/or its expert medical testimony. For the Region, the HO sought to introduce three substantive exhibits (Board Exhibits ("BX") 4-6) purportedly related to the status of COVID-19 or the safe conduct of a manual election. JSUMC objected to the introduction of these exhibits. After the documents were admitted over its objection, the Hospital indicated its intention to file a Request for Special Permission to Appeal the HO's Ruling on this issue, as well.²

JSUMC filed its Witness Testimony Special Appeal on Friday, August 28, 2020. Therein, JSUMC again argued that contrary to the ruling of the HO, it did not attempt to "litigate" the mechanics of the election. Rather, JSUMC explained its desire to make an appropriate factual record by presenting relevant expert medical testimony to inform the RD's assessment of the risk of transmission of COVID-19 under its election plan and, derivatively, whether a mail ballot election should be directed in this case.

² On August 28, JSUMC filed that Request for Special Permission to Appeal on this issue and explained why those exhibits should not have been admitted. On September 3, 2020, the Regional Director granted JSUMC's request to appeal the ruling on the admission of the exhibits and denied the appeal on the merits. Herein, the Hospital renews its objection to the admission of these documents for the reasons stated in its appeal, which is incorporated herein by reference.

On August 31, 2020, the RD granted the Witness Testimony Special Appeal and then denied it on the merits, writing:

With respect to the Employer's substantive claim, I note the following: The determination of the method of election is exclusively within the discretion of the Regional Director, so long as consideration is given to the relevant factors, and it is not an issue that is subject to litigation at a representation hearing. See *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954); see also, NLRB Casehandling Manual (Part Two), *Representation Proceedings*, Sections 11228, 11301.2, and 11301.4. The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See *Ceva Logistics US, Inc.*, 357 NLRB 628 (2011). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

It was clearly within the discretion of the Hearing Officer to preclude witness testimony and presentation of other evidence of nonlitigable issues, such as the mechanics of the election herein. I find that the Hearing Officer exercised that discretion appropriately and made the correct ruling.

August 31, 2020 Order Granting Employer's Request to File Special Appeal and Denying Special Appeal, and Closing the Hearing Record, at 2. The RD made no attempt to evaluate the relevance or probative value of the proffered testimony. He simply dismissed it out of hand as seeking to "litigate" an issue committed to his discretion.

The Decision and Direction of Election, which includes the Order, issued on September 15, 2020. This Request for Review followed timely.

III. FACTUAL BACKGROUND.³

JSUMC proposed a unique election plan that exceeded relevant guidance from the Centers for Disease Control ("CDC") and the protocols suggested in GC Memorandum 20-10 (July 6, 2010) ("GCM 20-10"). JSUMC's election plan is described in detail in the Hospital's

³ This section is based on the offers of proof made by JSUMC's counsel and the exhibits admitted into the record.

post-hearing brief, filed on September 10, 2020. In the interest of brevity, JSUMC will not recount every detail of its plan here, but several elements thereof merit particular attention:

- The election process would be conducted entirely outside in the open air.
- The voting would take place in a large, 2010 square foot “voting bubble” open on one side, with three large open windows on another side.
- The proposed voting set-ups provided for ample social distancing between voters, observers and Board personnel in the voting bubble.
- The individuals in the voting bubble would be provided with comprehensive personal protective equipment (“PPE”), including full body protective coverings and specialized breathing apparatus.⁴
- The individuals in the voting bubble, a maximum of eight under the plan’s most “crowded” set up, and the ballot box would be protected by Plexiglas.
- 85% of the voting unit works on the day shift. The voting bubble is on the path they walk to enter the Hospital. Except for about 20 potential voters who are a two-minute walk away, the voting bubble is a 30-second walk from where the remaining voters park.
- The potential voters would line up immediately outside the voting bubble in the open air in a parking area that would be cleared during the election; this area would be covered by an open-sided tent in the event of inclement weather.
- Voters entering the line would wear protective masks, use hand sanitizer and be temperature and symptom screened by experienced, non-supervisory Hospital personnel.⁵
- The voting line would be managed by crowd delineators like those in airports with marks on the ground six-feet apart.
- The voting bubble would also have socially distanced marks on the ground.
- Prominent signage would announce social distancing and mask requirements inside and outside the voting bubble.
- Through management of start times and release periods, JSUMC would limit the number of potential voters in line, with a targeted maximum of 100 at any time.
- All other applicable CDC requirements and GCM 20-10 guidelines would be observed.

The entirety of JSUMC’s election plan was reviewed and approved by Dr. Zuckerman, Vice President of Infection Prevention and Control for the Hackensack Meridian Health network

⁴ The Hospital would provide Board Agent(s), observers and interpreters a so-called Powered Air-Purifying Respirators (“PAPR”), a Controlled Air-Purifying Respirator (“CAPR”), or an N95 mask in lieu of a surgical mask.

⁵ Mimicking JSUMC procedure for entering the Hospital.

and the Hospital.⁶ The offer of proof regarding what Dr. Zuckerman would have testified to, if permitted, is set forth at length in JSUMC's post-hearing brief. Certain aspects of his position on the election plan merit special consideration:

- Since the COVID-19 pandemic began, Dr. Zuckerman has had direct personal responsibility for managing the HMH network's and the Hospital's COVID-19 response.
- Dr. Zuckerman closely reviewed the Hospital's election plan.
- In his expert medical opinion, the proposed election plan was safe and appropriate for the conduct of an in-person manual ballot election.
- JSUMC's team members, including the members of the voting unit, have been reporting to work at JSUMC every day since the beginning of the pandemic.
- Those team members are experienced under the Hospital's established safeguards (EX-11) and would have faced no additional risk of exposure by voting.
- In-person voting under Hospital's plan presented no marginal risk of exposure to COVID-19 for team members.
- The participation in the voting process by non-team members presented no additional risk of exposure for them.
- The enhanced PPE (PAPR, CAPR, and N95 masks) offered by JSUMC would have further reduced the potential for exposure to COVID-19 for individuals utilizing those devices, by preventing the wearer from being exposed to COVID-19 in the ambient air.
- Since COVID-19 transmission occurs almost exclusively through mucus membranes, anyone with such enhanced PPE is at virtually no risk of exposure.
- Voters with masks and social distancing waiting in line or in the voting bubble would face almost no risk of exposure because COVID-19 exposure and transmission is dramatically reduced outdoors.
- The individuals in the voting bubble would have literally been at no risk of exposure, due to the safety and PPE precautions and given the constant air flow through that area.
- As the pandemic evolved, the Hospital's COVID-19 protocols and procedures changed in parallel.
- By reference to the exhibits introduced by JSUMC, Dr. Zuckerman would have testified about dramatically improved COVID-19 positivity rates, case reporting data, hospitalizations, and other current indicia of COVID-19 prevalence in New Jersey, in Monmouth County and, in particular, at JSUMC.

⁶ JSUMC contends that the HO and the RD should have recognized Dr. Zuckerman as expert witness in the field of infection prevention and control and that he should have been permitted to give his expert medical opinion on the risk of COVID-19 transmission presented by the election plan and the relative risk of infection from COVID-19 in the acute care hospital setting in New Jersey..

- Team members in the Hospital providing care to the now small number of COVID-19 positive patients and persons under investigation (“PUI”) for exposure are themselves protected from exposure by the Hospital’s applicable safety protocols and procedures.
- Since the beginning of the pandemic, 174 team members have tested positive for COVID-19 out of an employee complement of 4260.
- On the hearing date, seven team members had a positive COVID 19 test, a positive test ratio of 0.16%.
- As of September 9, 2020, five team members had a positive COVID-19 test, a positive test ratio of 0.11%.
- Finally, Dr. Zuckerman would have testified to his concluding and overarching medical opinion that given the proposed election logistics, JSUMC can safely conduct an in-person manual election that would pose no marginal risk to team members and pose no greater risk of exposure to non-team members than they would face in going about their daily lives.

IV. ARGUMENT.

A. Standard of Review.

Under Section 102.67(d) of the Board’s Rules, a request for review may be granted upon one or more of the following grounds:

- (1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or
 - (ii) A departure from, officially reported Board precedent.
- (2) That the regional director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

29 C.F.R. 102.67(d). All of these grounds are satisfied here. JSUMC also notes the Board recently granted review and stayed a mail ballot election in *Aspirus Keweenaw*, Case No. 18-RC-

263185 (Aug. 25, 2020). The Board’s apparent rationale for granting review and staying the mail ballot election in that case may apply perforce to this case.

B. This Case Presents an “Appropriate Proceeding” for the Board to Explain the Circumstances Under Which a Manual Election Should be Directed Based on the Local Circumstances, Including the Applicability to Such a Determination of GC Memorandum 20-10.

This case presents the ideal “appropriate proceeding” for the Board to address the when a manual election should be directed when COVID-19 is a consideration. 29 C.F.R.

§102.67(d)(4); see, e.g., *Pace Southeast Michigan*, 2020 WL 4584253, * 1 fn. 1; *Roseland Community Hospital*, 2020 NLRB LEXIS 296, *1 fn. 1 (May 26, 2020) (unpublished).

The time is ripe to address this issue on review and to do it on this record. This case involves an acute care hospital with sophisticated virus control protocols already in place, with a voting unit comprised of trained team members who have acted with diligence and responsibility to keep themselves and their patients safe (as evinced by miniscule low infection rate amongst team members and patients), located in a region which the State of New Jersey considers to be at low COVID-19 risk⁷, with a uniquely protective election plan that is a an extension of its existing risk management practices and which meets and exceeds that suggestions for a safe manual election described in GC Memo 20-10.

Finally, the Board’s recent decision to grant the request for review and stay the election in the *Aspirus* case signals the need for a national, uniform approach to resuming manual elections in appropriate circumstances, as presented in this case. The parties and, above all, members of the voting unit should be the beneficiary of a common, reasoned approach, rather than a default preference to the indefinitely suspension of manual elections regardless of the

⁷ EX-9 and EX-10. EX-9 shows the COVID-19 infection rate in Monmouth County from April 9, 2020 through August 24, 2020. EX-10 shows the number of daily new cases in Monmouth County from March 9, 2020 through August 24, 2020.

local circumstances. Accordingly, there is a compelling reason to grant review under Section 102.67(d)(4).

C. The RD's Order Unreasonably Departed from Established Board Precedent and Misapplied Settled Board Law.

The RD departed from established Board law by ordering a mail election without the necessary “extraordinary circumstances” to do so. As a matter of sound precedent and policy, the Board has long preferred manual elections. *Nouveau Elevator Indus., Inc.*, 326 NLRB 470, 471 (1998); *see also San Diego Gas & Elec.*, 325 NLRB 1143, 1144 (1998) (noting “the value of having a Board agent present at the election”); *Thompson Roofing, Inc.*, 291 NLRB 743, 743 n.1 (1988) (observing that “mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections because of the absence of direct Board supervision over the employees’ voting”). This case presents none of the situations identified in *San Diego Gas* as warranting a mail ballot election –where eligible voters are “scattered” because of their job duties, work schedules, or otherwise involved in a strike, a lockout, or active picketing. *See San Diego Gas & Elec.*, 325 NLRB at 1145 (Employees “scattered” over 8 locations 80 miles apart); *Sutter W. Bay Hosps.*, 357 NLRB 197, 198 (2011) (Mail ballot appropriate due to scattered schedules, requiring multiple voting sessions at **four different facilities**); *Rocky Mountain Planned Parenthood, Inc.*, No. 27-RC-205940, 2018 WL 1806771 (NLRB Apr. 16, 2018) (Mail ballot ordered because employees “scattered” across the state of Colorado in **fifteen different facilities**); *Duke Univ.*, No. 10-RC-187957, 2017 WL 971643 (NLRB Feb. 23, 2017) (Mail ballot appropriate due to the “undisputed evidence of the voters’ scattered schedules, the ability of the voters to read and understand the mail ballots, and the inefficiency of using Board resources to run a manual election **in at least five locations** over the course of two 14.5 hour days.”) (emphasis added).

The RD erroneously concluded that voting unit in this case was “scattered” to justify the direction of a mail ballot. The RD cited for two reasons for this conclusion: (1) the multiple schedules worked by the voting unit constituted traditional “scattering;” and (2) the COVID-19 pandemic alone “scattered” the voting unit. The RD wrote:

Because of the nature of the COVID-19 crisis in New Jersey, the employees at issue here are “scattered” in an unusual way: at any given time, multiple employees are likely to be unable to enter the Employer’s facility due to illness or quarantine. A manual election would make it not just difficult but impossible for a number of employees to vote. The employees are also more traditionally “scattered” in that they work very different schedules on all days at all hours.

Order at 7. This logic perverts Board precedent and grossly mischaracterizes the facts.

Contrary to the RD’s erroneous conclusion, the voting unit here is not “scattered.” All of the potential voters report to JSUMC’s campus for work. 85% of the voting unit reports to work on the day shift. The remaining 15% work other shifts. The voting periods proposed by the Hospital would provide every working team member with at least two voting windows. Team members not scheduled to work on the days of the election would have ample opportunity to vote. Indeed, “[t]he mere fact that employees may work multiple shifts, thereby necessitating more than one voting session during the course of the workday, is not in and of itself a sufficient basis for directing a mail ballot election.” *See San Diego Gas & Elec.*, 325 NLRB at n.7. The RD’s definition of “scattered” in this case could result in mail ballot elections being directed at every acute care hospital or other large employer with a 24/7 operation involving multiple shifts regardless of COVID-19. The RD clearly erred on this issue and the Request for Review should be granted.

The RD also wrongly concluded that the pandemic itself “scattered” the voting unit. Contrary to his speculation that “multiple employees are likely to be unable to enter the Employer’s facility due to illness or quarantine,” the facts showed that less than 10 team

members out of 4260 total employees were positive for COVID-19 at the time of the hearing and the Order . Even assuming all the positive individuals were in the 1250+ voting unit, less than 1% of the potential voters would “be unable to enter the Employer’s facility due to illness or quarantine.”⁸

More generally, the COVID-19 pandemic indisputably constituted, and in some locations and local circumstances, still may constitute, “extraordinary circumstances” warranting a mail ballot election. However, that is not the situation at JSUMC’s campus now. The RD failed to evaluate whether JSUMC’s election plan and the current status of COVID-19 at the Hospital constituted “extraordinary circumstances.” Instead, the RD relied on generalized and backward looking concerns over the potential for COVID-19 exposure, however ill-defined and remote, without due consideration for extensive mitigation protocols contained in the Hospital’s election plan. The RD, thus, misapplied the “extraordinary circumstances” standard. Indeed, under the RD’s analysis, current local conditions are irrelevant and there will be no manual elections in Region 22 until the RD unilaterally determines that COVID-19 has been completely vanquished.

D. The RD’s Order Contains Numerous Clearly Erroneous Findings on Substantial Factual Issues.

1. The RD Misunderstood and Misrepresented Current New Jersey Executive Orders.

The RD, as in all other DDEs he has issued since the beginning of the pandemic, selectively and misleadingly interprets Governor Murphy’s COVID-19 executive orders. From

⁸ The Regional Director relatedly asserted: “Under ordinary circumstances, a sick employee might still vote; he or she would not necessarily be barred from the facility. Under ordinary circumstances, it is reasonable to expect that few if any employees would be sick at all. However, under current circumstances, as the pandemic continues to rise and fall in New Jersey, it is almost certain that multiple employees will be sick. Multiple employees were unable to work due to COVID-19 at the time of the hearing. . . . Additionally, a manual election would automatically disenfranchise certain employees.” *Id.* at 7. For the reasons discussed above, these conclusions are unsupported by the record. Under the RD’s line of reasoning, there could never be another manual ballot election v facility because there is a chance that some of the potential voters might have the flu or any other infectious disease.

the RD's perspective, the executive orders continue to mandate a virtual lockdown; he references executive orders requiring: aggressive social distancing measures (Executive Order No. 104); temporarily directing residents to stay at home (Executive Order No. 107); temporarily shutting down construction projects (Executive Order No. 122); establishing rules for indoor dining (Executive Order No. 157); pausing the resumption of indoor dining (Executive Order No. 158); requiring individuals to wear masks in outdoor public spaces when they cannot socially distance (Executive Order No. 163); and mailing every active registered voter a mail ballot ahead of the general election (Executive Order No. 177).

Contrary to the RD's view, the Governor's recent executive orders reflect the changed circumstances of the pandemic and the great strides made in combatting COVID-19. On August 13, 2020, Governor Murphy signed Executive Order No. 175 authorizing New Jersey schools to open for in-person instruction subject to certain protocols. On August 27, 2020, Governor Murphy signed Executive Order No. 181 permitting gyms, indoor amusement parks and water parks to reopen effective September 1, 2020. On September 1, 2020, the Governor signed Executive Order No. 183 permitting the resumption of indoor dining. (*See Exhibits 2, 3 and 4, respectively*). Under these executive orders, the New Jersey residents have now interacted in person in a variety of educational, social and business settings. How can those activities be permitted for all residents of New Jersey, but JSUMC's team members cannot vote in person under a sophisticated election plan?

Furthermore, Executive Order No. 177, on which the RD improperly relies for support, actually mandates that each county provide potential voters in local, state and federal elections the opportunity to vote in person: "Each county shall open a minimum of at least one (1) polling place in each municipality. Each county shall open a minimum of fifty (50) percent of its

regularly used polling places, and may open more than the minimum number of its regularly used polling places.” See BX 3(r) EO 177 (emphasis added). Notably, EO 177 provides that “if a county Boards of Elections is unable to reach a minimum of fifty (50) percent of its regularly used polling places, the county Boards of Elections *must* utilize schools or other large facilities to serve as large voting centers, which will accommodate more voting districts in one polling place.” See BX 3(r), at 7 (emphasis added). Notably, JSUMC’s election plan meets the standards set forth in EO 177. Again, how can in person voting be permitted for all residents of New Jersey, but JSUMC’s team members cannot vote in person under a sophisticated election plan?

In this regard, the Board should note that Essex County (for which Newark is the county seat) intends to use the Prudential Center, an indoor coliseum which can hold up to 20,000 individuals, as a mass voting center.⁹ The Prudential Center is less than one mile from Region 22’s offices in Newark. These recent Eos, based on the current COVID-19 circumstances, simply cannot be squared with the RD’s doomsday perspective.

Finally, the RD relies on outdated EO to support his preferred outcome. He cites Executive Order No. 173 from *August 3, 2020* as support for his speculation that COVID-19 rates were increasing in New Jersey at the time of the DDE. The RD simply ignores more recent EOs that are to the contrary. On August 26, 2020, Governor Murphy issued Executive Order No. 180, wherein he stated “due to the significant emergency measures the State has taken in response to COVID-19, there has now been a *decrease* in the rate of reported new cases of COVID-19 in New Jersey, in the total number of individuals being admitted to hospitals for

⁹ See Tap into Newark, “Prudential Center to Serve as ‘Super’ Polling Site for 2020 Presidential Election,” at <https://www.tapinto.net/towns/newark/sections/government/articles/prudential-center-to-serve-as-super-polling-site-for-2020-presidential-election>. Last visited September 17, 2020.

COVID-19, and in the rate of reproduction for COVID-19 infections in New Jersey.” *Id.* at 3 (emphasis added).

2. *The RD Erroneously Interpreted COVID Data.*

To exercise reasoned discretion, the RD should have reviewed current, relevant data in making his decision, but he did not do that. Instead, the RD made personal, non-medical decisions relating to COVID-19: “Although the overall rates of COVID infection have improved greatly in the past several months, the rate of transmission in Monmouth County continues to fluctuate *dangerously*.” Order at 3. (emphasis added). The data simply does not support this speculative assertion. The weekly New Jersey Department of Health COVID-19 Activity Level Report does not reflect “dangerous fluctuation” in Monmouth, or any other county in New Jersey for that matter. *See* Exhibit 5 JSUMC Employees With, Or Suspected of Having, COVID-19 – 8/24/20 to 9/9/20. The RD refers to the number of COVID-19 positive team members and patients at JSUMC, but refuses to acknowledge the extremely low infection rates those numbers reflect. The RD’s refusal to review current, relevant data at JSUMC is a clear abuse of discretion.

3. *The RD Either Misunderstood or Ignored Important Elements of JSUMC’s Proposed Election Plan.*

JSUMC sought to have Mr. Campbell testify about the logistics of its election plan, but the Regional Director arbitrarily precluded his testimony.¹⁰ As repeatedly explained during the hearing, the Hospital presented two potential options for the election set up. Given the size of the voting bubble (2010 square feet), there is indisputably room for multiple Board Agents, multiple observers seated at multiple tables, and multiple interpreters – all socially distanced.

¹⁰ JSUMC’s Post-Hearing Brief, Proposed Exhibit 14, attached hereto as Exhibit 6 (“Campbell Affidavit”).

The RD effectively described the voting bubble as a cramped area where social distancing would be impossible. In fact, it is an open air space measuring 67 feet by 30 feet.

The RD speciously notes that the voting bubble is “insufficient to allow for safety, social distancing, and Board agent control of the no-electioneering zone in an election of this magnitude.” *See* Order at 5. Respectfully, this is another fiction created by the RD to avoid directing an in-person election. At the outset, the size of the voting unit is not a consideration in determining what type of election to direct.¹¹ Additionally, the RD fails to acknowledge the Hospital’s significant investment in compliance with all CDC, State of New Jersey and even NLRB General Counsel’s protocols for the conduct of in-person voting. Contrary to the RD’s suggestion, all 1,200 potential voters would not show up at the same time and stand in line for hours on end.

Mr. Campbell would have exposed these “strawman” arguments if he had been permitted to testify. Mr. Campbell would have explained the election plan, including the spacing available in the voting bubble and adjacent parking lot, the possibility of placing a Board Agent outside the voting bubble to observe the line itself, and the ability to rearrange the set up inside the voting bubble. Dr. Zuckerman, had he been permitted to testify, would have provided his medical opinion on the efficacy of those alternatives. In furtherance of his preferred mail ballot election, the RD arbitrarily permitted neither to testify.

The RD also failed to consider the entirety of JSUMC’s election plan, which included providing full body clothing covers and specialized breathing apparatus for non-team members participating in the election.

¹¹ *San Diego Gas* makes no mention of the size of the unit affecting a decision to order a mail ballot election, and before COVID regions regularly held elections with hundreds, and in some cases, thousands of eligible voters with votes taking place over several days.

4. *The RD's Order is Filled with Inaccurate and Ill-Reasoned Conclusions About COVID-19.*

A number of the conclusions reached by the RD in the Order are factually inaccurate or contrary to Dr. Zuckerman's medical opinion contained in his proffer and his affidavit attached to the Hospital's post-hearing brief at the direction of the HO.¹² Specifically, when analyzing the proposed election plan, the RD asserted that "[t]he necessarily long hours in a facility where COVID-19 is undeniably present also expose the Board agents and observers to potential infection at a level far exceeding normal." Order at 6. There is no support for this assertion in the record. As Dr. Zuckerman would have testified, the extremely low prevalence of COVID-19 positivity in the Hospital is irrelevant because the election will be held outside the facility. Zuckerman Affidavit at 3. The Board agents and observers will not enter the Hospital. Dr. Zuckerman would have opined that the immediate environment is what matters for COVID-19 transmission and, between the enhanced PPE and the open air, the potential for exposure in the voting bubble would be de minimis. *Id.*

The RD also states, "[t]he Employer argues that running the election is no different from a trip to the grocery store. This argument is not persuasive. Each interpersonal interaction allows the virus an opportunity to spread. The election does not replace a trip to a grocery store; it adds a minimum of 18 hours of polling exposure to ordinary grocery store exposure." *Id.* This contention is likewise unsupported and contrary to Dr. Zuckerman's expert medical opinion. Zuckerman Affidavit at 7.

The RD asserted that because the polling would occur in several voting periods over at least two days, "the cumulative exposure of all involved increases exponentially." Order at 6.

¹² JSUMC's Post-Hearing Brief, Proposed Exhibit 15, attached hereto as Exhibit 7 ("Zuckerman Affidavit").

This is another unsupported, uninformed and false conclusion. Obviously, if this were true, every team member would have COVID-19 based on their daily “cumulative exposure.” Dr. Zuckerman would have explained that risk does not increase “exponentially” if precautions like those proposed by the Employer are followed. Zuckerman Affidavit at 8.

The RD concluded, “[b]ecause employees work such varied shifts, some voters will be required to make an extra trip to their place of work in order to vote, and they, too, will be required to increase their exposure to the virus.” *Id.* Dr. Zuckerman would have testified that this alternative theory of “additional” exposure is false. The risk of transmission exists only when an individual is in the immediate vicinity of a patient or team member positive for COVID-19. Zuckerman Affidavit at 3. Under the election plan, a team member voting on his/her day off carries virtually no risk. Coming to vote in an open air voting bubble without ever entering the Hospital does not increase the risk of exposure.

The RD contended “The State of Emergency in New Jersey and Governor Murphy’s Executive Orders continue to encourage the public to limit unnecessary large gatherings and social events for this very reason.” *Id.* As it applies to this case, the RD has completely misrepresentation (or misunderstood) of Executive Orders No. 161, which has permitted outdoor gatherings of up to 500 persons since July 2, 2020. *See* BX 3(m) EO 161. JSUMC proposes an election plan that contemplates a gathering of only 20% of the maximum permitted, with full COVID-19 mitigation protocols.

In an attempt to undermine JSUMC’s position, the RD noted “The Employer entered into evidence a document titled [‘]Guidelines for Healthy In-Person Voting,[‘] published by the Brennan Center and the Infectious Diseases Society of America. The introduction to this document reads, in part, [‘]voting by mail is the safest option to avoid COVID-19

transmission.[']” Order at n.6. (quoting EX-12) Had the RD continued his review, he would have seen that this article actually describes safe, in-person voting arrangement. EX-12 at 2-4. Regarding this article, Dr. Zuckerman would have explained that an important distinction between the in-person voting in the general population and at Hospital is that JSUMC’s team members are trained in COVID-19 mitigation protocols, screened every time they report to work, and even more importantly, team members practice universal masking when in the Hospital. Zuckerman Affidavit at 4.

5. *The RD Arbitrarily Precluded JSUMC from Presenting Relevant Expert Medical Testimony Concerning the Risk of COVID-19 Transmission under JSUMC’s Election Plan.*

Evaluating the medical issues presented in this case are outside the RD’s considerable expertise. COVID-19 transmission and related mitigation protocols are not traditional election mechanics issues within the RD’s experience. To the contrary, determining whether specific proposed election protocols will adequately protect potential voters and, *inter alia*, Board personnel against exposure to COVID-19 is a medical issue for which expert medical testimony is indisputably relevant. JSUMC contends that any understanding of these complex issues should be informed by is expert medical testimony. The RD arbitrarily precluded such testimony in this case.

Live testimony on the medical and election mechanics issues presented here would have ensured that the record contained the most accurate and complete evidence. The Board’s Rules specify that “[a]ny party shall have the right to . . . call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party’s contentions and are relevant to . . . the other issues in the case that have been properly raised.” 29 CFR § 102.66(a). Thus, JSUMC should have been permitted to call witnesses to testify regarding the safety of its proposed manual election procedures, and the Union should have been

permitted to cross-examine these witnesses.

Live testimony would have allowed the Regional Director to make informed decisions on these critical issues. In denying JSUMC's Witness Testimony Special Appeal, the RD wrote: "It was clearly within the discretion of the Hearing Officer to preclude witness testimony and presentation of other evidence of nonlitigable issues, such as the mechanics of the election herein. I find that the Hearing Officer exercised that discretion appropriately and made the correct ruling." Witness Testimony Special Appeal, at 2. As noted above, JSUMC did attempt to litigate any issue committed to the RD's discretion. JSUMC tried to present the best evidence for the RD's consideration. The fact that the RD has discretion to decide election mechanics does not authorize him to refuse to hear relevant, probative evidence. The RD acted arbitrarily by doing so here.

Finally, the probative value of the proffered testimony far outweighed any marginal cost, such as by minimally prolonging the hearing. As explained in more detail above, this testimony was necessary to allow the RD—and ultimately, the Board—to make a meaningful, fact-based, assessment of whether JSUMC's proposed manual election procedures adequately address any potential risk of transmitting COVID-19. The RD should have permitted JSUMC to present this evidence. The RD's ruling precluding it has significantly prejudiced the Hospital.

V. CONCLUSION.

For the foregoing reasons, the Board should grant JSUMC's Request for Review because the Regional Director abused his discretion in ordering a mail ballot election rather than an in-person election.

Dated: September 21, 2020

Respectfully submitted,

/s/ Christopher J. Murphy

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CERTIFICATE OF SERVICE

The undersigned, an attorney, affirms under penalty of perjury that on September 21, 2020, he caused a true and correct copy of JSUMC's Request for Board Review of Regional Director's Order Directing Mail Ballot Election to be served upon counsel for the parties at the by e-mail:

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EXHIBIT 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**JERSEY SHORE UNIVERSITY MEDICAL
CENTER, A DIVISION OF HACKENSACK
MERIDIAN HEALTH¹**

Employer

and

Case 22-RC-263932

**HEALTH PROFESSIONALS AND ALLIED
EMPLOYEES, HPAE, AFT/AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Jersey Shore University Medical Center, a Division of Hackensack Meridian Health (the Employer) is engaged in the operation of an acute care hospital providing healthcare and related services. Health Professionals and Allied Employees, HPAE, AFT/AFL-CIO (the Petitioner) seeks to represent the following bargaining unit:

All full time, regular part time, and per diem non-professional employees employed by the Employer at its 1945 Route 33, Neptune, New Jersey, 07753 facility, including ambulatory pharmacy coordinators, ambulatory pharmacy liaisons, ambulatory pharmacy techs, anesthesia assistants, audiology technicians, cardiac clinical technicians, cardiac technicians, catering to you associates, certified medical assistants, cooks, diagnostic imaging aides, dialysis technicians, distribution associates, EEG technicians, endoscopic assistants, environmental service aides, experience ambassadors, experience coordinators, food service associates, hyperbolic oxygen techs, inventory control coordinators, lab assistants, NUS monitor techs, OR service technicians, patient care technicians, patient observers, patient transport aides, PCA trauma techs, perioperative associates, perioperative buyers, pharmacy techs, rehabilitation associates, rehab liaison, SPD equipment technicians, SPD production coordinators, student clinical aides, supply coordinators, teacher associate and ops assistant, teacher associates, technician SPD certified, and unit secretaries; but excluding all business office clerical employees, registered nurses, physicians, managerial employees, confidential employees, technical employees, skilled maintenance employees, other professional employees, guards, and supervisors as defined in the Act.

The parties stipulate, and I find, that this unit is appropriate. The unit includes over 1200 employees who work varying schedules, as the Employer operates 24 hours per day, 7 days per week. Some employees work only weekdays while others work only weekends; some employees work two or three days in the middle of the week; some per diem employees work unpredictable schedules on an as-needed basis; and some employees work nights while other employees work mornings or evenings. The employees speak English, Spanish, and Creole, and the services of interpreters may be required at an in-person election.

¹ The Employer's name was amended at the hearing.

The only matter at issue is whether to conduct a manual or mail ballot election. No issues were litigated at the hearing.² During the course of the hearing, the Employer filed two Special Appeals regarding witness testimony and an objection to receipt of certain Board exhibits. I denied these appeals. The Employer renews its appeals in its brief. My ruling remains unchanged. As regards the receipt of the exhibits, contrary to the Employer's assertion, I have made my decision based on up-to-date information about COVID-19 rather than "stale data." Although I have focused my evaluation on the status of COVID-19 in Monmouth County, I do not believe that data relating to counties adjacent to Monmouth is irrelevant. Rather, employees, patients, and those involved in the election are likely to travel through adjacent counties on a daily basis. COVID-19 does not observe county boundaries.

As regards the witness testimony, issues related to the method of election are not litigable.³

The Petitioner contends that a mail ballot election would be most appropriate during the pandemic, while the Employer proposes a manual election. The Employer argues that the Board has historically preferred manual elections and that such an election can be held safely on the Employer's premises. The Petitioner argues that given the nature of the proposed bargaining unit, the large number of employees, the scattered schedules for the employees, and the COVID-19 public health emergency, a mail ballot election will enfranchise the most employees and protect the health of all concerned.

I have carefully considered the positions and arguments presented by the parties. As fully discussed below, even though a manual election would be preferable in the absence of the COVID-19 pandemic, I have directed a mail ballot election. This is the most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the pandemic. Most importantly, a mail ballot election will enfranchise the greatest number of employees and best protect the health of the voters, party representatives, Board agents, and the general public.

Facts

COVID-19 in New Jersey

The Employer is located in Neptune, New Jersey, which is in Monmouth County. New Jersey is the most densely populated state in the country; overall, measured in absolute residents, Monmouth

² The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held by videoconference before Hearing Officer Eric Pomianowski of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer. The parties were granted an opportunity to file briefs, and both parties did so.

³ Per NLRB Casehandling Manual for Representation Proceedings, Section 11301.4:

In the event a hearing is held during the course of processing the petition, the Hearing Officer will explore the parties' positions regarding election arrangements, but parties shall not be permitted to litigate this issue. Cf. *2 Sisters Food Group, Inc.*, 357 NLRB 1816 (2011); *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954).

County is the eleventh most populated county in New Jersey. It is approximately 60 miles from New York City, the initial epicenter of the COVID-19 pandemic in the United States. On March 9, 2020, New Jersey Governor Phil Murphy issued Executive Order No. 103, which declared a public health emergency and a state of emergency throughout New Jersey. In each subsequent Executive Order issued since March 9, including Executive Order No. 178 issued on August 14, 2020, Governor Murphy has reiterated that a public health emergency and state of emergency still are in effect in New Jersey. The Executive Orders have affected all aspects of life in New Jersey by implementing aggressive social distancing measures (Executive Order No. 104); temporarily directing residents to stay at home (Executive Order No. 107); temporarily shutting down construction projects (Executive Order No. 122); establishing rules for indoor dining (Executive Order No. 157); pausing the resumption of indoor dining (Executive Order No. 158); requiring individuals to wear masks in outdoor public spaces when they cannot socially distance (Executive Order No. 163); and mailing every active registered voter a mail ballot ahead of the general election (Executive Order No. 177). The State of New Jersey has taken these actions in an attempt to preserve public health and safety.

As of August 14, there were over 187,000 documented positive cases of COVID-19 in New Jersey; sadly, at least 14,064 of those cases resulted in death. While the rate of reported new cases of COVID-19 in New Jersey has been decreasing, according to Executive Order No. 173, issued on August 3, “the rate of transmission has increased over the last two weeks, and over the last two weeks, the seven-day rolling average of the number of cases has increased from between 200 and 300 each day to between 400 and 500 each day.” As a result, although New Jersey has begun to “reopen,” it continues to limit the number of individuals that may gather in an indoor setting, as such gatherings have resulted spikes of COVID-19 throughout the state.

As of August 24, Monmouth County was averaging 2.6 daily new cases per 100,000 population and the infection rate was .81, meaning that on average each COVID-positive person infected .81 other people. At the time of the hearing, this was the most recent information available and thus was entered into evidence by the Employer. However, on September 11, the very same website (covidactnow.org) cited by the Employer revealed that Monmouth County was averaging 5.1 daily new cases per 100,000 population and the infection rate was 1.17, leading the website to warn that “the total number of active cases in Monmouth County, New Jersey is growing at an unsustainable rate. If this trend continues, the hospital system may become overloaded. Caution is warranted.”⁴ Although the overall rates of COVID infection have improved greatly in the past several months, the rate of transmission in Monmouth County continues to fluctuate dangerously.

The Employer, as a large health care institution, has been directly affected by the pandemic. At the time of the hearing, seven employees were out of work due to positive COVID tests and nine more were out of work pending the results of COVID tests. In addition, there were three COVID-positive patients in the hospital. The Employer notes that these individuals make up only a small percentage of the hospital’s overall population of 4260 employees and 458 patients.

⁴ https://covidactnow.org/us/nj/county/monmouth_county?s=1019215, retrieved on September 11, 2020.

The Employer's Proposal

The Employer proposes to hold the election on two consecutive days with three voting periods each day: 5:30 a.m. until 9:30 a.m., 11:00 a.m. until 1:00 p.m., and 5:00 p.m. until 8:00 p.m. The Employer believes that the total polling time of 18 hours would accommodate the large number of voters working varied shifts, but is amenable to adding an extra day of polling. The Petitioner believes that a minimum of three days of polling would be necessary, and that even three days of polling might not be sufficient to accommodate all per diem employees.

The proposed location is what is known as “the old ambulance bay.” The bay is 67 feet long and 30 feet deep. It is adjacent to the garage where the majority of employees are required to park. There are walls on three sides of the bay; one wall has three open windows. The fourth side of the bay is open to the outdoors and can be partially concealed with a temporary wall to allow for both privacy and increased air circulation. The Employer proposes to place the Board agent running the election in makeshift plexiglass box in the center of the bay, with two observers socially distanced in one corner; two voting booths in the opposite corner; two voting booths near the entrance and exit; and the ballot box with a second Board agent on the far wall. Alternatively, the Employer suggests reducing the number of voting booths to two to allow the election to be run by a single Board agent.

An open-air parking lot beside the bay would be used for a socially distanced line of up to 100 voters. All employees would be thermoscanned and asked about their health before they joined the line; employees are not permitted on the Employer's premises if they are running a fever or otherwise show symptoms of COVID-19, and temperature checks prior to entering the hospital are part of the Employer's normal policy. In the event of inclement weather, the Employer would cover the parking lot with an open-sided tent. The Employer would also utilize a crowd delineator to keep employees in a socially distant line.

The Employer is willing to provide disposable pencils and disinfecting wipes to all voters. The Employer is also willing to provide personal protective equipment and cleaning supplies as requested or warranted.

Due to the nature of the Employer's business, the election cannot rely exclusively on employees being released to vote in groups, as at any given time a particular employee may be handling an issue vital to a patient. While the Employer is willing to release employees to vote to the extent possible, it expressed a hope that most employees would choose to vote before beginning their shifts. However, the Employer proposes to ensure that no more than 100 employees will be in line at any given time. While the Employer does not expect 100 employees to attempt to vote simultaneously, if the line were to reach 100, further employees wishing to vote would be told to return at another time.

The Employer is amenable to holding both the pre-election conference and the ballot count via videoconference.

Analysis

In response to the evolving realities of the pandemic, on July 6 the Office of the General Counsel issued Memorandum GC 20-10, Suggested Manual Election Protocols. The suggested protocols include polling times sufficient to accommodate social distancing without unnecessarily elongating exposure

among Board agents and observers; the employer's certification in writing that polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark his or her ballot; glue sticks or tape to seal challenged-ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board agents; and masks, hand sanitizer, gloves and disinfecting wipes. Memorandum GC 20-10 further requires an employer's written certification of how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19; who have been directed by a medical professional to proceed as if they have tested positive for COVID-19; who are awaiting results of a COVID-19 test; who are exhibiting symptoms of COVID-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19.

The Employer is willing and able to comply with most requirements of this Memorandum. However, the spacious polling area proposed by the Employer is nonetheless insufficient to allow for safety, social distancing, and Board agent control of the no-electioneering zone in an election of this magnitude.

A voter list including 1200 names is by its nature unwieldy. Accordingly, observers take longer to find the correct name than they would in a smaller election. Board agents sometimes mitigate this issue by allowing each party to have two observers at the election and splitting the list in half so that voters can use two separate check-in tables. This would not be possible where social distancing allows for only two observers. Likewise, Board agents, who have more experience handling voter lists than do employee observers, often sit beside or lean over observers to help them find the correct names quickly. Social distancing does not allow Board agents to proceed in this manner. Even if a Board agent were to have a separate copy of the list and tell the observers, from a safe distance, which part of which page to examine, the time elapsed would be far greater than the time it would have taken the Board agent simply to point at the correct name under ordinary circumstances. Furthermore, the Employer's proposal allows for one or two Board agents, thus making it unlikely that a Board agent's attention could be spared to monitor the list. Just as there is insufficient space in the proposed location for four observers, there is insufficient space for the three or four Board agents who might typically be assigned to run an election of this size. Likewise, there is insufficient space for Spanish or Creole interpreters.

Once a voter has been checked off the list, he or she is given a ballot. A Board agent must keep track of all ballots in the voting area regardless of whether those ballots have yet to be distributed, are in a voter's hand as the voter walks to or from a booth, or are in the ballot box. This goal is virtually impossible to achieve where multiple voting booths are scattered along multiple walls and the Board agents are confined to plexiglass boxes.

Additionally, further delays in moving a voter through the voting process arise when the Board agent distributing ballots needs to complete the paperwork required for challenged ballots. While there are no agreed-upon challenges in this matter, it is unlikely that such a large voting unit will not require challenges to ballots of employees whose per diem hours put their eligibility in dispute, whose names are not on the list, whose names the observers cannot find, or whose lack of fluency in English has led to a communication error. Often in large elections, Board agents designate a challenge agent and a challenge table when large amounts of voters approach the polling area simultaneously. This precaution is not possible where social distancing and limited staffing are required.

Another bottleneck may occur if Board agents are forced to limit the number of voting booths because there are not enough Board agents to monitor the booths or sufficient space to set up the booths six feet from one another. Voters also require more time to read a ballot printed in three languages than they require to read a ballot printed in one language. The difference may be mere seconds, but those seconds multiply quickly when 1200 individuals are eligible to vote.

The large size of the unit means that even under the best of circumstances, employees would have to stand in line. The line, naturally, will grow longer if there are delays due to observers struggling to find names without help, insufficient staffing to delegate challenged ballots to a third or fourth Board agent, additional time spent communicating with non-English speakers, and voters waiting for booths or taking extra time to find the correct language on the ballot. The Employer plans to allow up to 100 employees to wait in line and turn away voters who arrive when 100 voters are already in line. Turning away voters and assuming that they will be able to find another opportunity to vote is inherently problematic and would likely result in objections if, indeed, an employee failed to return.

Additionally, the layout of the proposed election does not allow Board agents to appropriately monitor the line of voters so as to enforce no-electioneering rules. Board agents inside the bay will be unable to see the parking lot. A Board agent leaving his or her plexiglass box defeats the purpose of the plexiglass box. In any event, the insufficient staffing of the election mandated by the amount of space inside the bay would likely result in no Board agent being available to monitor the line as the Board agents attempted to distribute ballots; write challenges; answer employee questions; monitor the voting list; and keep the booths, ballots, and ballot box within sight. All of these tasks can be performed simultaneously by one Board agent at a small election. All of these tasks cannot be performed simultaneously by one Board agent at a 1200-voter election.

The necessarily long hours in a facility where COVID-19 is undeniably present also expose the Board agents and observers to potential infection at a level far exceeding normal. The Employer argues that running the election is no different from a trip to the grocery store. This argument is not persuasive. Each interpersonal interaction allows the virus an opportunity to spread. The election does not replace a trip to a grocery store; it adds a minimum of 18 hours of polling exposure to ordinary grocery store exposure. Therefore, the cumulative exposure of all involved increases exponentially. Because employees work such varied shifts, some voters will be required to make an extra trip to their place of work in order to vote, and they, too, will be required to increase their exposure to the virus. The State of Emergency in New Jersey and Governor Murphy's Executive Orders continue to encourage the public to limit unnecessary large gatherings and social events for this very reason.

Additionally, a manual election would automatically disenfranchise certain employees. This is not a mere hypothetical. At the time of the hearing, multiple employees were not at work because they had tested positive for COVID-19 or were awaiting the results of tests. In the course of performing their job duties, many unit employees come in contact with COVID-positive patients and therefore have a higher-than-average risk of contracting the disease themselves. Employees must pass a temperature and wellness check to enter the Employer's facility; thus, any employee unlucky enough to be ill, under quarantine, or

simply warm enough to be considered potentially feverish on the day of the election will automatically forfeit his or her right to vote.⁵

Under ordinary circumstances, a sick employee might still vote; he or she would not necessarily be barred from the facility. Under ordinary circumstances, it is reasonable to expect that few if any employees would be sick at all. However, under current circumstances, as the pandemic continues to rise and fall in New Jersey, it is almost certain that multiple employees will be sick. Multiple employees were unable to work due to COVID-19 at the time of the hearing. These are, indeed, the most extraordinary of circumstances as contemplated by the Board in *San Diego Gas and Electric*., 325 NLRB 1143, 1144 (1998).

The Board in *San Diego Gas* reviewed the circumstances under which it may be appropriate to direct a mail ballot election. The Board's longstanding policy has been that, as a general rule, representation elections should be conducted manually. Recognizing, however, that there are some extraordinary circumstances that would make it difficult for eligible employees to vote in a manual election, the Board vested Regional Directors with broad discretion to determine the method by which elections shall be conducted. Under the guidelines set forth in *San Diego Gas*, a mail ballot election may be appropriate where eligible voters are "scattered" because of their job duties in terms of geography or varied work schedules, so that all employees cannot be present at a common location at common times to vote manually. When these situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of the parties and the efficient use of Board resources.

Because of the nature of the COVID-19 crisis in New Jersey, the employees at issue here are "scattered" in an unusual way: at any given time, multiple employees are likely to be unable to enter the Employer's facility due to illness or quarantine. A manual election would make it not just difficult but impossible for a number of employees to vote. The employees are also more traditionally "scattered" in that they work very different schedules on all days at all hours. As a result, many employees would need to make an extra trip to the Employer's facility to vote, thereby increasing their exposure to COVID-19.

Conducting an election manually will also expose non-employee participants to the risk of contracting the disease, including multiple Board agents and any non-employee representatives who choose to be present for any pre-election conference and on-site ballot count. While the Employer's proposed safeguards for a manual election are commendable, COVID-19 is already present both inside and outside the Employer's facility. Given the documented presence of the disease and the possibility of asymptomatic spread, the risk of spreading the disease to employees during the election, and to non-employee participants, is too great at this time.⁶

The Board has consistently taken the position that the pandemic constitutes extraordinary circumstances pursuant to *San Diego Gas*. For example, on August 19, 2020, in *Daylight Transport*, 31-RC-262633 (August 19, 2020) the Board, in denying the employer's request for review of a decision directing a mail-ballot election, advised:

⁵ The Employer suggests in its brief that it would be willing to set up a separate voting session for COVID-positive voters. It would be contrary to all New Jersey guidelines to encourage COVID-positive individuals to leave quarantine and interact with others so as to preserve their right to vote.

⁶ The Employer entered into evidence a document titled "Guidelines for Healthy In-Person Voting," published by the Brennan Center and the Infectious Diseases Society of America. The introduction to this document reads, in part, "voting by mail is the safest option to avoid Covid-19 transmission."

The Board will continue considering whether manual elections should be directed based on the circumstances then prevailing in the Region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10...

The Employer notes that the Board generally prefers manual election. While the Board has indeed expressed a general preference for manual balloting, it has never hesitated to ballot by mail when the circumstances warrant it. Indeed, the Board's preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees' representational desires. As the Board noted in *London's Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997):

[W]hile we agree with our dissenting colleague that the Agency has a proud long tradition of conducting elections by manual balloting and that most elections have been and are conducted manually, it has an equally long history of conducting elections by mail. From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail. See, for example, *Lykes Bros. S.S. Co.*, 2 NLRB 102, 108, 111 (1936); *United Press Assns.*, 3 NLRB 344, 352 (1937); *Pacific Greyhound Lines*, 4 NLRB 520, 539 (1937); *Pacific Lumber Inspection Bureau*, 7 NLRB 529, 534 (1938); *Salt River Valley Water Users Assn.*, 32 NLRB 460, 472 (1941); *Continental Bus Systems*, 104 NLRB 599, 601(1953); and *National Van Lines*, 120 NLRB 1343 (1958).

The majority opinion in *London's Farm Dairy, Inc.*, holds that balloting by mail is not less effective and does not lend itself to subterfuge, coercion, invasion of privacy or other abuse. As the Board observed then, "Indeed, in the 62-year history of the Act, there has been only one reported instance of such abuse, see *Human Development Assn.*, 314 NLRB 821 (1994), and there is a similar record in the 71-year history of the Railway Labor Act (RLA), under which the use of mail ballots in representation elections has been the rule and not the exception." Also note that no manual election has been conducted by the National Mediation Board (NMB) under the RLA since 1987. Simply put, the Board has a long and proud tradition of conducting manual- and mail-ballot elections alike. It simply prefers manual elections when, unlike here, they are feasible, safe, and practical to conduct.

I conclude that, under these circumstances, a mail ballot election is appropriate. A mail election has no apparent drawbacks, while an effective manual election cannot be run in compliance with GC Memorandum 20-10 at this time. For various reasons discussed above, it is highly impractical to attempt to create laboratory conditions for 1200 voters while social distancing in a facility where COVID-19 is present. However, a mail ballot election will enfranchise employees who cannot enter the Employer's facility for health reasons or due to positive COVID tests. In addition, a mail ballot election will protect the health and safety of voters, Agency personnel, the parties' representatives, and the public during the current health crisis.

Conclusion

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by HEALTH PROFESSIONALS AND ALLIED EMPLOYEES, HPAE, AFT/AFL-CIO.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On **October 2, 2020**, ballots will be mailed to voters by National Labor Relations Board, Region 22. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 22 office by close of business on **October 23, 2020**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by October 12, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 22 Office at (862) 229-7065 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) to be determined by the Regional Director, at 10:00 am between **November 6 and November 13, 2020**. The Region will provide the parties with at least 24-hours advance notice of the ballot count. Each party will be allowed to have one official, designated observer attend the virtual ballot count.

If the date the ballots are due to be deposited by Region in the mail, or the date set for their return, or the date, time, and place of the count for the mail ballot election are postponed or canceled, the Regional Director, in his discretion, may reschedule such dates, times, and places for the mail ballot election.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during **the payroll period ending September 5, 2020**, the payroll period immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an

economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. **Because this election is being conducted by mail, it is requested that the Employer provide self-adhesive mailing labels (to the Region) of the eligible employees' names and addresses.**

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **SEPTEMBER 17, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed no later than 12:01 a.m. on **SEPTEMBER 29, 2020**. If the Employer does not receive copies of the notice by September 27, 2020, it should notify the Regional Office

immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

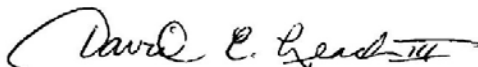
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: September 15, 2020



DAVID E. LEACH III, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 22
20 WASHINGTON PLACE, FLOOR 5
NEWARK, NJ 07102-3127

EXHIBIT 2

EXECUTIVE ORDER NO. 175

WHEREAS, on March 9, 2020, through Executive Order No. 103, the facts and circumstances of which are adopted by reference herein, I declared both a Public Health Emergency and a State of Emergency throughout the State due to the public health hazard created by Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, and 171 issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, and August 1, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, and Nos. 168-173 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to protect the health, safety, and welfare of New Jersey residents by, among other things, reducing the rate of community spread of COVID-19, I issued Executive Order No. 104 (2020) on March 16, 2020, the facts and circumstances of which are

also adopted by reference herein, which established statewide social mitigation strategies for combatting COVID-19, including the closure of all public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, to students and the cessation of in-person instruction at all private and public institutions of higher education; and

WHEREAS, to further limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) required all public, private, and parochial preschool program premises, and elementary and secondary schools, including charter and renaissance schools, to continue to remain closed to students and required all public and private institutions of higher education to continue to cease in-person instruction; and

WHEREAS, in light of month-to-month decreases in the rate of reported new cases of COVID-19 in New Jersey, the State began to take steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreased, the ongoing risks presented by COVID-19 meant that many of the State's measures remained in place, both to reduce additional new infections and to save lives; and

WHEREAS, after consultation with officials from the Department of Health, I announced a multi-stage New Jersey's Road Back Plan ("Road Back Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, consistent with the Road Back Plan, I issued Executive Order No. 149 (2020), which authorized the gradual restart of ordinary child care services, certain youth sporting activities, and summer camps, including public and non-public school district-operated summer educational programming, with social distancing and infection control requirements, Executive Order No. 155 (2020), which permitted the resumption of limited in-person instruction at institutions of higher education, Executive Order No. 157 (2020), which permitted indoor recreational facilities to resume operations in accordance with certain health and safety restrictions, and Executive Order No. 168 (2020), which allowed for the resumption of contact sport practices and competitions for certain organized sports in outdoor settings; and

WHEREAS, the resumption of youth sports activities, youth summer camps, and school district-operated summer educational programs, with appropriate health and safety protocols, have not resulted in any notable increase in New Jersey's number of COVID-19 cases; and

WHEREAS, the Department of Education has determined that in-person instruction provides students with academic, social, emotional, and mental health supports that cannot be provided with the same level of efficacy in a remote setting; and

WHEREAS, the Department of Education has found that reopening schools for in-person instruction is critical in facilitating the social and emotional health of students and providing educators with the ability to actively participate in student learning, provide feedback, and promote active learning among students on a daily basis; and

WHEREAS, the American Academy of Pediatrics has determined that in-person instruction is preferred over other forms of instructional delivery for reasons such as addressing and preventing learning loss, attending to students' social and emotional wellbeing, and minimizing educational inequities resulting from the remote learning model; and

WHEREAS, New Jersey's schools serve a critical function for the State's workforce, in that they provide safe supervision of children during the day, allowing parents and guardians to work and move the economy forward; and

WHEREAS, in order to provide the many benefits of in-person instruction, New Jersey public and private schools alike must ensure that the school environment is safe for both students and staff; and

WHEREAS, access to school buildings is not available to the general public and the individuals present in a school building do not vary from day to day, which creates a lesser risk of COVID-19 transmission than exists in spaces generally open to the public and makes contact tracing substantially easier in the event of an outbreak; and

WHEREAS, a school district may need additional time to properly implement the health and safety precautions necessary to return any portion of the student population to in-person instruction, potentially making it necessary for such district to begin the 2020-2021 school year with remote instruction for all students; and

WHEREAS, those school districts that are unable to meet the necessary health and safety precautions must actively strive to address any deficiencies in order to return all or a portion of

its student population to in-person instruction at the earliest possible date; and

WHEREAS, it is necessary for families to have the option to engage in full-time remote learning, even where a school district is providing in-person instruction; and

WHEREAS, unlike other activities that can take place without gathering limits outdoors, education-related activities cannot be readily relocated outdoors for many reasons, including the need for continuous supervision of children, which is considerably more difficult in outdoor settings; and

WHEREAS, because education-related activities often take place over the course of a full school day and happen every weekday, it is much more difficult to stagger the time that students spend in educational facilities; and

WHEREAS, pursuant to N.J.S.A. 18A:6-123(b)(2) and (4), measures of student growth based on standardized assessments are a component of gauging student progress in overall educator evaluations; and

WHEREAS, the cancellation of statewide assessments for the Spring 2020 testing window pursuant to Executive Order No. 117 (2020) resulted in reduced availability of data regarding student achievement and performance; and

WHEREAS, due to the lack of standardized assessment data for the 2019-2020 school year, it will not be possible to measure student growth through multiple objective measures from the 2019-2020 school year as a measure for overall educator evaluations as required by N.J.S.A. 18A:6-123(b)(2) and (4); and

WHEREAS, overall educator evaluations consist of additional categories that remain unaffected by the cancellation of statewide assessments for the Spring 2020 testing window and thus will serve

as accurate measures of teacher performance for the 2020-2021 school year; and

WHEREAS, it is appropriate to allow institutions of higher education to resume in-person instruction not previously permitted under Executive Order No. 155 (2020) while adhering to necessary health and safety standards; and

WHEREAS, cafeterias and other designated eating areas within public and private school buildings and institutions of higher education play essential roles in the provision of meals to students, faculty, and staff, and allow for the safe and cleanly consumption of meals; and

WHEREAS, cafeterias and other designated eating areas within public and private school buildings and institutions of higher education are not open to the general public in the same manner as traditional indoor dining establishments, thus creating decreased risk of transmission of COVID-19 when appropriate health and safety protocols are in place; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Effective immediately, Executive Order Nos. 104 (2020) and 107 (2020) are hereby superseded to the extent that they require all public, private, and parochial preschool program

premises, and elementary and secondary schools, including charter and renaissance schools (collectively "school districts"), to remain closed.

2. All school districts that reopen for full or part-time in-person instruction must meet the following health and safety standards, delineated in the Department of Education's "Checklist for Re-Opening of School 2020-2021" and detailed in "The Road Back: Restart and Recovery Plan for Education" which include, but are not limited to the following:

- a. At least six (6) feet of distance between individuals in all settings to the greatest extent practicable or social distancing modifications, such as a physical barrier or turning desks to face the same direction, when six (6) feet of distance cannot be achieved;
- b. Mandatory use of face coverings by staff, students, and visitors, except in the following circumstances:
 - i. When doing so would inhibit the individual's health;
 - ii. When the individual is exposed to extreme heat outdoors;
 - iii. When the individual has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
 - iv. When a student's documented medical condition or disability, as reflected in an Individualized Education Program (IEP) or Educational Plan pursuant to Section 504 of

the Rehabilitation Act of 1973, precludes the use of a face covering;

- v. When the individual is under two (2) years of age;
 - vi. When the individual is eating or drinking;
 - vii. When the individual is engaged in high-intensity aerobic or anerobic activity;
 - viii. When a student is participating in high-intensity physical activities during a physical education class in a well-ventilated location and able to maintain a physical distance of six feet from all other individuals;
 - ix. When a student, as part of music instruction, is playing an instrument that would be obstructed by the face covering; or
 - x. When wearing a face covering creates an unsafe condition in which to operate equipment or execute a task.
- c. Routine cleaning and sanitization of classrooms, lunchrooms, gymnasiums, restrooms, high-trafficked areas such as hallways, high-touch areas such as light switches and door knobs, and shared surfaces;
- d. The facilitation of student hand washing at frequent intervals, or use of alcohol-based hand sanitizer if soap and water are not readily available;

- e. Use of face coverings and social distancing procedures to the extent practicable and cleaning protocols on school buses if students are bussed to and from school;
- f. Student and staff health screenings;
- g. Implementation of enhanced social distancing and infection control protocols for music, choir, and physical education classes that are conducted in indoor spaces, particularly where students are not wearing face coverings;
- h. A plan for response to students and staff that exhibit symptoms of COVID-19, which must include coordination with the local health department and procedures for isolating symptomatic students and staff;
- i. A plan detailing the response when students and/or staff test positive for COVID-19, which must include coordination with the local health department and procedures for isolating any students or staff who learn of a positive test result while on school grounds;
- j. Coordination with the local health department to support contact tracing efforts;
- k. A plan to ensure that indoor facilities have adequate ventilation;
- l. Implementation of social distancing and infection control practices during recess and physical education periods; and
- m. Procedures for resumption of athletics programs and extracurriculars, if applicable.

3. Public preschool, elementary, and secondary schools, including county vocational schools, charter schools, and renaissance schools (collectively "public school districts"), shall resume partial or full-time in-person instruction during the fall of school year 2020-2021.

4. Public school districts shall submit a reopening plan (the "Plan") to the Department of Education at minimum thirty days prior to the first day of school. A public school district that has already submitted such Plan pursuant to the standards outlined in "The Road Back: Restart and Recovery Plan for Education" will be considered to have satisfied this requirement if the Plan is otherwise consistent with the requirements of this Order. In addition to the Plan, a minimum of seven days prior to the first day of school, the chief school administrator or his/her designee must also certify to the Department of Education that the district has policies and procedures in place to meet the minimum health and safety standards set forth in Paragraph 2.

5. Nonpublic schools shall also create and maintain reopening plans. Those schools that intend to resume partial or full-time in-person instruction during the fall of 2020-2021 school year must certify to the Department of Education that the school has policies and procedures in place to meet the minimum health and safety standards set forth in Paragraph 2 of this Order.

6. School districts that resume partial or full-time in-person instruction shall permit students to engage in full-time remote learning upon the request of a parent or guardian, subject to the Department of Education's July 24, 2020 "Clarifying Expectations Regarding Full-time Remote Learning Options for Families in 2020-2021." School districts must implement a policy that, at a minimum, addresses the following:

- a. Unconditional eligibility for full-time remote learning;
- b. Procedures for parent or guardian submission of full-time remote learning requests;
- c. The scope and expectations of full-time remote learning;
- d. Procedures to transition from full-time remote learning to in-person instruction and services;
- e. Reporting data to the Department of Education regarding participation in full-time remote learning. Data must include number of students participating in full-time remote learning by each of the following subgroups: economically disadvantaged; major racial and ethnic groups; students with disabilities; and English learners; and
- f. Procedures for communicating the school district's full-time remote learning policy to school district families.

7. Public school districts that are or become unable to satisfy the health and safety requirements for in-person instruction, as detailed in Paragraph 2 of this Order, may provide full-time remote instruction to all students pursuant to N.J.S.A. 18A:7F-9.

8. Public school districts that determine that they cannot provide in-person instruction pursuant to Paragraph 7 of this Order must submit documentation to the Department of Education that identifies:

- a. The school building(s) or grade level(s) within the district that will provide full-time remote instruction;
- b. The specific health and safety standard(s) listed in Paragraph 2 of this Order that the school is unable to satisfy;
- c. The school's anticipated efforts to satisfy the identified health and safety standard(s); and
- d. A date by which the school anticipates the resumption of in-person instruction.

Such documentation must be submitted at minimum one week prior to the public school district's first day of school.

9. The Department of Education, by way of executive county superintendents, shall request periodic updates from the chief school administrator of a public school district offering only remote instruction in accordance with Paragraphs 8 and 9 of this Order to demonstrate that the school district is actively engaged in good-faith efforts towards the resumption of in-person instruction.

10. All instruction, whether in-person instruction or remote instruction, for the 2020-2021 year shall adhere to the following requirements, and any other requirements imposed by Order, statute, or regulation:

- a. A school day, whether in-person or remote must consist of at least four (4) hours of active instruction to students by an appropriately certified teacher, except that one continuous session of two and one-half hours may be considered a full day in kindergarten, pursuant to N.J.A.C. 6A:32-8.3.

b. District and school policies for attendance and instructional contact time will need to accommodate opportunities for both synchronous and asynchronous instruction, while ensuring the requirements for a 180-day school year are met pursuant to N.J.S.A. 18A:7F-9.

c. All instructional time shall be provided in accordance with the New Jersey Student Learning Standards.

11. All school districts participating in the National School Lunch and Breakfast Programs, regardless of whether they are required to participate or voluntarily opt-in to the programs, must offer the required meals to all children, regardless of eligibility, when the school day involves at least four hours of in-person or remote instruction.

12. For the 2020-2021 school year, N.J.S.A. 18A:6-123(b)(2) and (4) shall be waived and student growth data based on standardized assessment or student growth percentile shall not be used as a measure of educator effectiveness in the overall evaluation of any educator.

13. Effective immediately, degree-granting institutions of higher education may resume all in-person instruction not previously permitted in Executive Order No. 155 (2020). Institutions must provide students with the option of participation via remote instruction to the extent practicable.

14. In resuming in-person instruction, a degree-granting institution of higher education shall continue to adhere to the requirements of Paragraph 4 of Executive Order No. 155 (2020) as addressed in the restart plan submitted by the institution to the

Office of the Secretary of Higher Education, and any other requirements established by Order, statute, or regulation.

15. Nothing in Paragraph 13 of this Order shall be construed to preclude degree-granting institutions of higher education from continuing to provide instruction and services to students and members of the public in a form other than in-person instruction.

16. Paragraph 8 of Executive Order No. 107 (2020), which prohibits in-person dining at certain establishments that are open to the public, shall not apply to school district cafeterias or dining halls operated by degree-granting institutions of higher education, provided that social distancing can be maintained and access is limited to staff and students and is not available to the general public. In-person dining at degree-granting institutions of higher education shall continue to adhere to the requirements of Paragraph 4 of Executive Order No. 155 (2020) as addressed in the restart plan submitted by the institution to the Office of the Secretary of Higher Education. Such cafeterias and dining halls must adhere to infection control practices outlined for dining in the applicable reopening documents issued by the Department of Education and the Office of the Secretary of Higher Education.

17. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

18. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of

any nature whatsoever, to cooperate fully in all matters concerning this Order.

19. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

20. This Order shall take effect immediately.

GIVEN, under my hand and seal this
13th day of August,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

EXHIBIT 3

EXECUTIVE ORDER NO. 181

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, and 180, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, and August 27, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, and Nos. 177-180 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to further limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) closed all recreational and entertainment businesses, and limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to offering food delivery and/or take-out services only; and

WHEREAS, given the decrease in the rate of reported new cases of COVID-19 in New Jersey, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State has taken and can take steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that many of the State's current measures must remain in place, both to reduce additional new infections and to save lives; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan (the "Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, the State is implementing its reopening process and has begun to relax restrictions on certain businesses, including the opening of all retail businesses, and resumption of limited indoor recreation and outdoor dining; and

WHEREAS, because of our continued progress, most recreational and entertainment businesses can allow the public into their indoor spaces for activity, as long as there are strict capacity limits and individuals are wearing face coverings; and

WHEREAS, a limited number of indoor entertainment businesses still pose a higher risk of transmission of COVID-19 at this time, such as performance-based locations such as movie theaters, performing arts centers, other concert venues, and nightclubs, because those businesses necessitate individuals congregating together concurrently in one indoor location for a prolonged period of time, which is different than indoor retail settings, and even most recreational and entertainment businesses where individuals do not inherently spend a prolonged amount of time together in one location; and

WHEREAS, Executive Order No. 157 (2020) permitted certain recreation and entertainment businesses, including those businesses that offered fitness activities, to reopen subject to their compliance with specified health and safety protocols; and

WHEREAS, issuing health and safety protocols that apply to fitness activities that were previously permitted to resume can help ensure that these activities can continue to occur while minimizing the risk of COVID-19 transmission; and

WHEREAS, while gyms and fitness centers involve people congregating in a confined space and exercising, individuals are typically utilizing the facility for a short period of time, so that with strict mitigation protocols in place, safe operations can resume inside the facilities; and

WHEREAS, certain businesses that were permitted to resume operations were required to adopt policies and procedures that incorporated critical health and safety guidelines, including

through Executive Orders Nos. 122, 157, and 163 (2020), and which required that staff wear gloves at worksites; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has now advised that gloves should be worn in certain limited circumstances, such as when caring for a sick individual or while cleaning, but that frequent handwashing is generally the preferable method to maintain appropriate hand hygiene; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. "Health clubs," as defined by N.J.S.A. 56:8-39, which include gyms and fitness centers, as well as amusement and water parks, can open their indoor premises as of 6:00 a.m. on Tuesday, September 1, 2020, provided that such businesses adopt policies that include, at minimum, the following requirements:

- a. Limit occupancy of any indoor premises to 25 percent of the stated maximum capacity, if applicable, at one time, excluding staff;
- b. Require that reservations, cancellations, and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider

populations that do not have access to internet service or credit cards;

- c. Install a physical barrier, such as a shield guard, between customers and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
- d. Limit the use of equipment rented or otherwise provided by the business to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners, and sanitize such equipment before and after use;
- e. Demarcate and post signs that denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;
- f. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- g. Provide employees break time for repeated handwashing throughout the workday;
- h. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- i. Limit occupancy in restrooms and locker facilities that remain open to avoid over-crowding and maintain social distancing through signage and, where practicable, the utilization of attendants to monitor capacity;
- j. Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:

- i. Routinely clean and disinfect all high-touch areas in accordance with DOH and CDC guidelines, particularly in spaces that are accessible to staff, customers, or members, or other individuals, including, but not limited to, restroom and locker facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;
- ii. Clean and disinfect equipment that is rented in accordance with CDC and DOH guidelines; and
- iii. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;
- k. Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
- l. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
- m. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;

- n. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness;
- o. Continue to follow guidelines and directives issued by the New Jersey DOH, the CDC and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe, and healthy work environment; and
- p. Require workers and customers to wear cloth face coverings while in the indoor portion of the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age. Businesses must provide, at their expense, such face coverings for their employees. If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline the individual entry into the indoor premises. This requirement shall not apply when wearing a face covering would inhibit that individual's health, including when in the water and in other situations where the presence of a mask would pose a risk to the individual's safety, or where the individual is under two years of age. Nothing in the stated policy should prevent workers or customers from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the business is otherwise required

to provide such worker with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering in the indoor premises due to a medical condition that inhibits such usage, neither the business nor its staff shall require the individual to produce medical documentation verifying the stated condition.

2. Notwithstanding the provisions of Paragraph 1, above, health clubs, amusement parks, and water parks are permitted to open their indoor premises to the public only where they are in compliance with the health and safety guidelines and standards issued by the Commissioner of the DOH.

3. Recreational and entertainment businesses that provide fitness instruction and which were permitted to resume operations pursuant to Executive Order No. 157 (2020) must adhere to the protocols outlined in Paragraph 1 and to guidance issued by the Commissioner of Health.

4. Paragraphs 8 and 10 of Executive Order No. 157 (2020) are superseded to the extent that they are inconsistent with the provisions of this Order.

5. Any type of event at one of the above-described facilities that involves individuals who are there at a specific time, a specific location, and for a common reason, such as a fitness class at a gym or a birthday party at an amusement park, are subject to the applicable gathering limits, which were most recently laid out in Executive Order No. 173 (2020).

6. Businesses subject to the requirements of Executive Orders Nos. 122, 157, and 165 (2020) are no longer required to mandate that workers wear gloves on the premises or when in contact

with customers or goods. Such businesses may adopt policies that require staff to wear gloves, in addition to regular hand hygiene. Where a business requires its staff to wear gloves while at the worksite, the business must provide such gloves to staff. The specified businesses must ensure that staff practice regular hand hygiene when interacting with the public. Paragraphs 1 and 3 of Executive Order No. 122 (2020), paragraphs 1 and 7 of Executive Order No. 157 (2020), and paragraphs 1, 2, 3, 4, and 5 of Executive Order No. 165 (2020) are superseded to the extent that they are inconsistent with the provisions of this Order.

7. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

8. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

9. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

10. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

11. This Order shall take effect immediately, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
27th day of August,
Two Thousand and Twenty, and
of the Independence of the
United States, the Two
Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

EXHIBIT 4

EXECUTIVE ORDER NO. 183

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, and 180, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, and August 27, 2020, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, I issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, and Nos. 177-181 (2020), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to further limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) closed all recreational and entertainment businesses, and limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to offering food delivery and/or take-out services only; and

WHEREAS, given the decrease in the rate of reported new cases of COVID-19 in New Jersey, including a reduction in the total number of individuals being admitted to hospitals for COVID-19, the State has taken and can take steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 mean that many of the State's current measures must remain in place, both to reduce additional new infections and to save lives; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan (the "Plan") for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, in accordance with this Plan, on June 3, 2020, I signed Executive Order No. 150, which authorized food or beverage establishments to offer in-person service at outdoor areas, provided that the food or beverage establishment complied with certain social distancing protocols; and

WHEREAS, Executive Order No. 150 (2020) prohibited smoking in any outdoor areas designated for the consumption of food and/or beverages, but stated that the requirement that food or beverage establishments impose this prohibition would automatically sunset when in-person service was permitted in indoor areas; and

WHEREAS, on June 9, 2020, I signed Executive Order No. 153, which allowed all recreational and entertainment businesses to reopen their outdoor spaces to the public as long as they adopted policies containing a specified list of health and safety requirements; and

WHEREAS, I signed Executive Order No. 157 on June 26, 2020, which authorized most recreational and entertainment businesses to reopen their entire premises, whether indoor or outdoor, to the public, contingent on those businesses adopting certain health and safety protocols; and

WHEREAS, while Executive Order No. 157 (2020) announced the limited resumption of indoor dining, this step was put on hold in Executive Order No. 158 (2020), in light of COVID-19 spikes in states around the nation, which were attributed by state officials and other experts, at least in part, to activities in indoor food and beverage establishments; and

WHEREAS, Executive Order No. 157 (2020) prohibited certain recreational and entertainment businesses, including health clubs, performance-based entertainment centers such as movie theaters, performing arts centers, or other concert venues, and indoor amusement or water parks, from opening their indoor spaces to the public because they were deemed to pose an unacceptably high risk of transmission of COVID-19 at that time; and

WHEREAS, on August 27, 2020, I signed Executive Order No. 181 (2020), which opened health clubs and indoor amusement and water parks with strict capacity limits and mask requirements; and

WHEREAS, indoor performance-based entertainment centers have posed unique challenges because they involve individuals in proximity for unusually significant periods of time, and, in the case of centers like movie theaters that offer concessions, necessitate individuals removing their masks for limited periods; and

WHEREAS, indoor dining has also presented challenges given that it necessitates individuals removing their masks, and given that it has been tied to spikes in other states; and

WHEREAS, because of the enormous progress that New Jersey has made in combatting the spread of COVID-19, including the lack of any sustained uptick in transmission for the last several months, it is now appropriate to allow indoor dining and indoor entertainment centers to operate, with strict capacity limits and health and safety protocols; and

WHEREAS, in line with the State's overall rules, which require individuals to wear a face covering any time they are in a range of indoor locations, except when doing so would endanger someone's health or would physically block an activity from taking place, individuals will still be required to wear a mask in indoor dining locations or

performance-based entertainment centers except when consuming their food or drinks; and

WHEREAS, in light of this continued progress, and of the importance of activities that receive heightened First Amendment protection, including religious worship and political activities, it is appropriate to adjust the limit on these types of indoor gatherings upward, while maintaining the 25 percent capacity limit that ensures that individuals are able to appropriately social distance; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Effective at 6:00 a.m. on Friday, September 4, 2020, restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail consumption privileges, collectively referred to as "food or beverage establishments," are permitted to offer in-person service at indoor areas, provided that the establishment complies with the following requirements:

- a. Limit the number of patrons in indoor areas to 25 percent of the food or beverage establishment's indoor capacity, excluding the food or beverage establishment's employees;
- b. Ensure that tables where individuals or groups are seated are six feet apart in all directions from any other table or seat and that individual seats in any shared area that is not reserved for individual groups, such as an indoor bar area, are also six feet apart in all directions from any other table or seat;

- c. Require indoor patrons to wear face coverings while inside the indoor premises of the food or beverage establishment. When seated at their table or their individual seat, indoor patrons shall wear face coverings until their food or drinks arrive, and after individuals have finished consuming their food or drinks, they shall put their face coverings back on. The face covering requirement does not apply if the patron has a medical reason for not wearing a face covering or is a child under two years of age;
- d. Food or beverage establishments shall only allow patrons to place orders for indoor table service when they are seated at a table or bar, and only wait staff or other employees may bring food or beverages to seated patrons;
- e. Patrons may only consume food or beverages while seated; and
- f. Abide by all other health and safety standards issued by the Commissioner of DOH, including infection control practices and other sanitization protocols, consistent with her authority under the Emergency Health Powers Act.

2. Effective at 6:00 a.m. on September 4, 2020, entertainment centers where performances are viewed or given, including movie theaters, performing arts centers, and other concert venues, may open their indoor spaces to the public, subject to the following requirements:

- a. Limit the number of patrons in any indoor room where a performance is viewed or given to 25 percent of the stated maximum capacity, if applicable, at one time, excluding the entertainment business's employees, but regardless of the capacity of the room, such limit shall never be larger than 150 persons;

- b. Individuals who purchase or reserve tickets together may be seated together, but must be six feet away from all other groups or individuals in all directions;
- c. Require that reservations, cancellations, and pre-payments be made via electronic or telephone reservation systems to limit physical interactions. Such policies shall, wherever possible, consider populations that do not have access to internet service or credit cards;
- d. Install a physical barrier, such as a shield guard, between visitors and employees wherever feasible or otherwise ensure six feet of distance between those individuals, except at the moment of payment;
- e. Limit the use of equipment rented or otherwise provided by the business to one person at a time, excluding immediate family members, caretakers, household members, or romantic partners, and sanitize such equipment before and after use;
- f. Demarcate and post signs that denote six feet of spacing in all commonly used and other applicable areas or where people may form a line;
- g. Require infection control practices, such as regular hand washing, coughing and sneezing etiquette, and proper tissue usage and disposal;
- h. Provide employees break time for repeated handwashing throughout the workday;
- i. Provide sanitization materials, such as hand sanitizer and sanitizing wipes, to staff and customers;
- j. Limit occupancy in restrooms that remain open to avoid over-crowding and maintain social distancing through signage and, where practicable, the utilization of attendants to monitor capacity;

- k. Require frequent sanitization of high-touch areas including, at minimum, the following cleaning protocols:
 - i. Routinely clean and disinfect all high-touch areas in accordance with DOH and Centers for Disease Control and Prevention ("CDC") guidelines, particularly in spaces that are accessible to staff, customers, or members, or other individuals, including, but not limited to, restroom and locker facilities, counter tops, hand rails, door knobs, other common surfaces, safety equipment, and other frequently touched surfaces including employee used equipment, and ensure cleaning procedures following a known or potential exposure in compliance with CDC recommendations;
 - ii. Clean and disinfect equipment that is rented in accordance with CDC and DOH guidelines; and
 - iii. Train and equip employees to perform the above protocols effectively and in a manner that promotes the safety of the visitors and staff;
- l. Place additional restrictions on areas of the business, as necessary, to limit person-to-person interactions and facilitate appropriate social distancing;
- m. Immediately separate and send home workers who appear to have symptoms consistent with COVID-19 illness upon arrival at work or who become sick during the day;
- n. Promptly notify workers of any known exposure to COVID-19 at the worksite, consistent with the confidentiality requirements of the Americans with Disabilities Act and any other applicable laws;
- o. Clean and disinfect the worksite in accordance with CDC guidelines when a worker at the site has been diagnosed with COVID-19 illness;

- p. Continue to follow guidelines and directives issued by the New Jersey DOH, the CDC, and the Occupational Health and Safety Administration, as applicable, for maintaining a clean, safe and healthy work environment;
- q. Ensure that staff practice regular hand hygiene when interacting with the public. Businesses may adopt policies that require staff to wear gloves, in addition to regular hand hygiene. Where a business requires its staff to wear gloves while at the worksite, the business must provide such gloves to staff;
- r. Require workers and customers to wear cloth face coverings while in the indoor portion of the premises, except where doing so would inhibit that individual's health or where the individual is under two years of age. Businesses must provide, at their expense, such face coverings for their employees. If a customer refuses to wear a cloth face covering for non-medical reasons and if such covering cannot be provided to the individual by the business at the point of entry, then the business must decline the individual entry into the indoor premises. Nothing in the stated policy should prevent workers or customers from wearing a surgical-grade mask or other more protective face covering if the individual is already in possession of such equipment, or if the business is otherwise required to provide such worker with more protective equipment due to the nature of the work involved. Where an individual declines to wear a face covering in the indoor premises due to a medical condition that inhibits such usage, neither the essential retail business nor its staff shall require the individual to produce medical documentation verifying the stated condition; and

s. The requirement listed above in Paragraph 2(p) shall not apply where impracticable, such as when individuals are eating or drinking. Individuals who are eating or drinking concessions must wear face coverings before they begin eating or drinking, and then must put their face coverings back on after they are finished eating or drinking.

3. Effective at 6:00 a.m. on Friday, September 4, 2020, Paragraphs 2, 3, 4, and 5 of Executive Order No. 158 (2020) are hereby rescinded. After 6:00 a.m. on Friday, September 4, 2020, any retail, recreational, and entertainment business that is authorized to open its indoor premises to the public may allow the consumption of food, beverages, or smoking in those indoor premises, when otherwise permitted by State law. The State-mandated prohibition of smoking in any outdoor areas designated for the consumption of food and/or beverages shall sunset at 6:00 a.m. on Friday, September 4, 2020, although food or beverage establishments may choose to continue this prohibition if otherwise permitted to do so by State law.

4. Paragraph 1 of Executive Order No. 173 (2020) is hereby rescinded and the number of individuals at indoor gatherings that are not religious services or celebrations, political activities, wedding ceremonies, funerals, or memorial services shall be limited to 25 percent of the capacity of the room in which it takes place, but regardless of the capacity of the room, such limit shall never be larger than 25 persons or smaller than 10 persons. The number of individuals at indoor gatherings that are religious services or celebrations, political activities, wedding ceremonies, funerals, or memorial services shall be limited to 25 percent of the capacity of the room in which it takes place, but regardless of the capacity of the room, such limit shall never be larger than 150 persons or smaller than 10 persons. For purposes of this Paragraph, any private residence or residential unit shall be treated as a single "room."

5. Paragraph 1(b) of Executive Order No. 152 (2020) is hereby rescinded and all attendees at an indoor gathering must wear face coverings at all times except where doing so would inhibit the individual's health, where the individual is under two years of age, or when wearing a face covering is impracticable, such as when an individual is eating, drinking, or smoking.

6. While the numerical limits on indoor gatherings in Paragraph 1(a) of Executive Order No. 152 (2020) and the face covering requirement in Paragraph 1(b) of Executive Order No. 152 (2020) are hereby superseded, all other requirements for indoor gatherings contained in Paragraph 1 for Executive Order No. 152 (2020) shall remain in effect.

7. Any requirements in any Executive Order, Administrative Order, or agency directive that incorporated by reference the gatherings limits in Executive Order Nos. 107, 142, 148, 152, 156, 161, and/or 173 (2020) are amended to reflect the rules on gatherings stated in this Order.

8. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

9. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

10. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement.

11. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

12. This Order shall take effect immediately, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
1st day of September,
Two Thousand and Twenty, and of
the Independence of the United
States, the Two Hundred and
Forty-Fifth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Matthew J. Platkin

Chief Counsel to the Governor

EXHIBIT 5

JSUMC Employees With, Or Suspected of Having, COVID-19 – 8/24/20 to 9/9/20

| Date | Positive | Negative | Pending |
|------|----------|----------|---------|
| 8/24 | 7 | 1 | 9 |
| 8/25 | 8 | 0 | 5 |
| 8/26 | 11 | 0 | 6 |
| 8/27 | 11 | 1 | 7 |
| 8/28 | 9 | 2 | 7 |
| 8/29 | 9 | 0 | 7 |
| 8/30 | 9 | 0 | 7 |
| 8/31 | 9 | 0 | 6 |
| 9/1 | 8 | 2 | 6 |
| 9/2 | 7 | 1 | 7 |
| 9/3 | 7 | 4 | 4 |
| 9/4 | 7 | 2 | 5 |
| 9/5 | 6 | 2 | 6 |
| 9/6 | 6 | 2 | 6 |
| 9/7 | 6 | 2 | 6 |
| 9/8 | 6 | 2 | 3 |
| 9/9 | 5 | 2 | 5 |

JSUMC Patients With, Or Suspected of Having, COVID-19 – 8/24/20 to 9/9/20

| Date | Positive | Negative | Pending |
|------|----------|----------|---------|
| 8/24 | 2 | 6 | 0 |
| 8/25 | 1 | 1 | 0 |
| 8/26 | 3 | 4 | 0 |
| 8/27 | 3 | 8 | 0 |
| 8/28 | 4 | 3 | 0 |
| 8/29 | 4 | 4 | 0 |
| 8/30 | 2 | 1 | 0 |
| 8/31 | 2 | 2 | 0 |
| 9/1 | 1 | 6 | 0 |
| 9/2 | 0 | 5 | 0 |
| 9/3 | 0 | 3 | 0 |
| 9/4 | 2 | 5 | 0 |
| 9/5 | 2 | 5 | 0 |
| 9/6 | 1 | 4 | 0 |
| 9/7 | 1 | 5 | 0 |
| 9/8 | 1 | 4 | 0 |
| 9/9 | 2 | 0 | 5 |

EXHIBIT 6

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

**JERSEY SHORE UNIVERSITY MEDICAL
CENTER, HACKENSACK MERIDIAN
HEALTH**

and

**HEALTH PROFESSIONALS AND ALLIED
EMPLOYEES, AFT, AFL-CIO**

Case No. 22-RC-263999

CERTIFICATION OF DOUGLAS CAMPBELL

1 1. I am employed by Hackensack Meridian Health (“HMH”). My job title is
2 “Director of Operations and Risk Management” at Jersey Shore University Medical
3 Center. In this role, I serve as the Hospital Safety Officer and work to ensure regulatory
4 compliance. In this role, I monitor matters that may impact the Hospital. This includes
5 serious safety issues involving patients, team members, visitors and their families. Other
6 regulatory compliance items include environment of care issues, New Jersey Department
7 of Health complaints, EPA complaints, DEP complaints, and OSHA related matters.
8 Additionally, I am Chair of the JSUMC Emergency Management Committee and in this
9 role I serve as the Hospital’s Incident Commander during all emergency events from
10 preparing for the impact from tropical storms and hurricanes to the COVID -19
11 Pandemic. As the Incident Commander, I was responsible for implementing the
12 following safety procedures: opening and assigning staff to the incident command center,
13 working with assigned ICS roles within the command center that include Operations and
14 Logistics section chiefs, ensuring supplies are in place, resources are operational and that
15 senior management is advised and updated on all issues during an emergency situation.

1 2. There are approximately 1,250 team members that are eligible to vote in
2 this election. Eligible voters report at varying times throughout the day, with more than
3 85% (or about 780) of eligible voters reporting between the hours of 5:00 a.m. and 9:00
4 a.m. Based on the number of team members that are eligible to vote, I recommend that in
5 order to safely maintain social distancing, provide ample time for voters to participate in
6 the election if they choose to do so, and to ensure that the Hospital is properly staffed,
7 that the election be held on two consecutive days with three voting periods. These voting
8 periods will permit eligible voters multiple periods to vote before, during or after their
9 shifts. Additionally, JSUMC would stagger start times to ensure that no more than 100
10 voters are in line and are able to maintain proper social distancing.

11 3. Based on reporting and departing times for eligible voters, I recommend
12 the following voting periods: 5:30 a.m. – 9:30 a.m.; 11:00 a.m. -1:00 p.m.; 5:00 p.m. –
13 8:00 p.m. JSUMC would also be amenable to adding an additional day of voting, if
14 deemed necessary.

15 4. Based on logistical considerations such as parking arrangements, access to
16 the hospital, and typical paths for entry utilized by team members reporting to work, I
17 recommend that the vote occur in what is known as the “old ambulance bays” adjacent to
18 the HOPE Tower Garage. All day shift employees are required to park on the HOPE
19 Tower Garage.

20 5. In addition to being on the walking path from the HOPE Garage to the
21 Phoebe Courtyard where all team members enter work for screening, the old ambulance
22 bays provide for open-air flow and are covered and protected from any elements.

1 6. Employees starting work after 10:30 am are required to parking the
2 Harbor Garage, which is about a 30-second walk from the voting area. There are also
3 approximately 20 eligible voters working in the childcare area, which is about a 2-minute
4 walk from the voting area.

5 7. Upon exiting either the HOPE Tower or Harbor Garage employees may
6 proceed to the old ambulance bays (See EX-1 - Aerial Image)

7 8. The bays would be disinfected utilizing CDC recommended disinfectants
8 or better, as well as UV technology to clean and sanitize the area.

9 9. The proposed voting area in the old ambulance bays – which I will also
10 refer to as the “bubble” is 67 x 30 feet long, has a covering and walls on three sides (one
11 wall has three “windows” (no glass) that permits constant air flow into the space. Photos
12 of the bays were presented at the hearing as EX-2 and EX-3.

13 10. The voting area can be arranged in a number of different ways given the
14 size and open air nature of the area. One proposed arrangement provides that no more
15 than 8 individuals (2 board agents, 2 observers; 4 voters) would be in the voting “bubble”
16 at any one time as shown in ER Exhibit 4. The set up can be modified to permit less
17 voters in the area at one time so the single board agent is able to maintain control of the
18 list and ballot box simultaneously as shown in ER Exhibit 5.

19 11. Board agents and observers would be provided with disinfected chairs to
20 sit in should they wish to use them. Additionally, board agents would be surrounded by a
21 Plexiglas enclosure, and the same option would be offered to observers. If requested, we
22 could also place a Plexiglas barrier around the ballot box itself, although we believe that
23 is unnecessary given the low level of risk of transmission from a cardboard box.

1 12. Prior to entering the line, voters will be temperature checked by other
2 JSUMC non-supervisory team members. This is standard operating procedure prior to
3 entering the Hospital, so there will be no issues with training or experience.

4 13. Voters will also be asked several questions by other JSUMC non-
5 supervisory team members for a “symptom check” prior to entering the line – do you, or
6 have you had, a temperature of 100.4 or higher in the last 24 hours; have you tested
7 positive for COVID in the past 14 days; are you currently pending a COVID test result?
8 Again, this is standard operating procedure prior to entering the Hospital, so there will be
9 no issues with training or experience.

10 14. Once voters have passed temperature and symptom screening they will
11 sanitize their hands and enter the line which will be posted with large notices requiring 6
12 feet social distancing and the wearing of surgical masks. Should a voter present with
13 symptoms or have a temperature that exceed 100.4 the will be asked to leave and will not
14 be permitted to enter the line.

15 15. In the case that inclement weather is predicted for the days of the election,
16 the Hospital will provide a large tent with open sides to cover the parking area adjacent to
17 the old ambulance bays where the line of employees will form for voting.

18 16. In addition to postings mandating appropriate masking and social
19 distancing, markings on the ground will notate the flow of the line as well as 6 feet
20 spacing. JSUMC will use crowd delineators (the devices that create lines for crowd
21 control, such as at the airport) to ensure that voters waiting in line are controlled and
22 appropriately spaced. Non-supervisory JSUMC staff will be located at the entrance to the
23 line to perform temperature scans and symptom checks, but team members will be

1 expected to independently follow masking and social distancing guidelines. This should
2 not pose a problem as the team members follow the same directives inside the Hospital
3 every day.

4 17. Once voters enter the bubble they will again sanitize their hands and state
5 their names for the observers, proceed to collect their disposable pencil and ballot and
6 proceed to the voting booth.

7 18. Once the voter marks their ballot, they will utilize a disposable
8 disinfecting wipe to clean the booth area and proceed to the ballot box to deposit the
9 ballot. Once they deposit the ballot they will proceed out the exit and dispose of the
10 disinfectant wipe and pencil in a trash can outside the exit.

11 19. After voting, day shift employees will then proceed into the Hospital
12 through the Phoebe Courtyard entrance, which is their normal entrance. After voting,
13 night shift employees will proceed to their normal reporting gate, either Phoebe or the
14 NW Pavilion.

15 20. The board agent(s), observers and interpreters will be provided masks,
16 face shields, disinfectant wipes, hand sanitizer and a full-body clothes covering if
17 requested. In addition, if the board agent, observers or interpreters prefer a PAPR
18 (Positive Air Pressure Respirator) or CAPR (Controlled Air Purifying Respirator) or N95
19 mask those PPE items will be provided as well. Glue sticks will be provided for any
20 challenged ballots.

21 21. For privacy in the voting area, JSUMC will erect a temporary barrier to
22 shield the voting bubble from view from anyone walking past that area. Voter privacy
23 and confidentiality would be preserved.

1 22. All Hospital supervisors will be directed to use alternate entrances on the
2 days/periods of voting. Patients do not enter through the Phoebe Courtyard so there
3 would be no concern about a patient wandering into the area. Additionally, no visitors
4 are permitted at the hospital, with the exception of maternity, but regardless visitors do
5 not enter along this path.

I declare under penalty of perjury that the above is true and correct to the best of my
knowledge, information, and belief.

Executed on: September 10, 2020

A handwritten signature in dark ink, appearing to read "Douglas Campbell", is written above a horizontal line.

Douglas Campbell

EXHIBIT 7

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

**JERSEY SHORE UNIVERSITY MEDICAL
CENTER, HACKENSACK MERIDIAN
HEALTH**

and

**HEALTH PROFESSIONALS AND ALLIED
EMPLOYEES, AFT, AFL-CIO**

Case No. 22-RC-263999

CERTIFICATION OF DR. JERRY ZUCKERMAN

1 1. I am employed by Hackensack Meridian Health (“HMH”). My job title is “Vice
2 President, Infection Prevention and Control.” I am also on the HMH COVID executive steering
3 committee and several subcommittees and am responsible for planning, maintaining and
4 modifying COVID protocols across the entire HMH network, including Jersey Shore University
5 Medical Center.

6 2. In addition to my role as VP, Infection Prevention and Control, I served as the
7 Interim Chief Quality Officer for the Southern Market Region.

8 3. Prior to joining HMH I served as the Chief Quality and Patient Safety Officer at
9 Albert Einstein Medical Center in Philadelphia, where I also served as the Medical Director,
10 Infection Prevention and Control Department. Additionally, I served as a Consultant in
11 Infectious Diseases for over 20 years and have held numerous Professorships during my career at
12 Temple University Hospital, Albert Einstein Medical Center, Jefferson Medical College, and
13 Hackensack Meridian School of Medicine at Seton Hall.

1 4. I obtained my Bachelor of Arts degree from the University of Pennsylvania, my
2 Doctor of Medicine from Cornell University and completed internships and fellowships at
3 Temple University and the University of Pennsylvania.

4 5. I am currently licensed to practice medicine in the State of New Jersey, a member
5 of the Infectious Diseases Society of America and the Society for Healthcare Epidemiology of
6 America and have maintained a Specialty Board Certification as a Diplomate of the American
7 Board of Infectious Diseases since 1994.

8 6. I have participated in eight multi-year research projects concerning a variety of
9 infectious diseases medical conditions; have written 27 peer-reviewed abstracts, have served as a
10 lecturer or facilitator on 38 panels, and have contributed to 19 papers, monographs, book
11 chapters, reviews and editorials, including a very recent publication related to the success of
12 various COVID-19 therapy options.

13 7. My full Curriculum Vitae was presented at the Hearing as EX-6.

14 8. I have reviewed and provided input on the Hospital's proposed setup and
15 proposed protocols for an in-person election, and discussed the protocols with Doug Campbell,
16 the Director of Operations and Risk Management at JSUMC. I also reviewed the hearing
17 transcript. In my expert medical opinion, the voting protocol as designed, along with the high
18 degree of COVID risk prevention protocols already in place at the Hospital, mitigates any
19 marginal risk associated with participating in an in-person election for anyone participating in
20 the election process from team members to NLRB personnel. The protocols proposed by the
21 Hospital align in accordance with all CDC, State of New Jersey, or Infectious Disease Society of
22 America recommended COVID protocols for the gathering of individuals for any event,
23 including in-person elections. See EX-12. In fact, the Hospital's proposal to limit the number of

1 individuals in the voting bubble, and open-air area consisting of approximately 2,000 sf to no
2 more than eight, and to limit the number of individuals in the line to enter the bubble, in an open
3 air tent, to no more than 100 falls well below the current guidelines in the State of New Jersey
4 which permit up to 500 individuals at an outside event.

5 9. COVID is primarily transmitted via respiratory droplets from an infected
6 individual, whether symptomatic or not, to another individual. The secretions come from the
7 nose or mouth and transmission may occur when infectious respiratory droplets are deposited on
8 the mucus membranes in the nose, eyes, or mouth of a non-infected individual. The utilization of
9 social distancing, time limiting exposure to others, proper hand washing and hygiene, the
10 donning of surgical masks which cover the mouth and nose, the wearing of goggles or a face
11 shield to protect the eyes, and the flow of fresh air protect individuals from transmission thereby
12 eliminating risk to others. One cannot look at the risk, without also reviewing the risk mitigation
13 efforts. Since the beginning of the pandemic, approximately 4% of team members at JSUMC, or
14 174 out of a workforce in excess of 4200, have tested positive for COVID. As we learned more
15 about the virus and how it was transmitted, we were able to modify protocols, and the percentage
16 of JSUMC team members that are positive, as of the date of the hearing, sat at 0.16%.

17 10. COVID rates peaked in New Jersey in the 2nd week of April 2020. Around this
18 same time, Monmouth County and JSUMC also peaked with COVID infections and patients.
19 Since that time, New Jersey, Monmouth County and JSUMC have seen a steady decline in:
20 Hospitalizations and deaths related to COVID, COVID infection rates, and the rate of
21 transmission. The rate of transmission measures the spread of COVID. At the height of the
22 pandemic, the rate of transmission in New Jersey was 5. This meant that for every COVID

1 diagnosis that patient spread the virus to 5 other individuals. As of the date of the hearing, the
2 rate of transmission in New Jersey was less than 1.

3 11. It is unquestionable that had I been asked to approve an in-person election in
4 March or April I would have refused to do so. However, rates have continued to decline in the
5 general population of New Jersey as well as amongst our team members and patients to almost
6 nil. As of the date of the hearing, there were two patients with positive COVID tests and seven
7 team members with positive tests. As of the date of this affidavit, there are two patients with
8 positive COVID tests, and five team members with positive tests.

9 12. The medical community as a whole has learned so much more about COVID and
10 its transmission since that timeframe and has reframed policies and protocols to ensure the best
11 protection for our team members and the public. Any suggestion that a hospital, a location where
12 universal use of personal protective equipment (PPE), screening of all patients, visitors and
13 employees for symptoms and fever, and extensive cleaning protocols are utilized, is unsafe or a
14 hotspot for transmission is uninformed.

15 13. Hospitals are not hotspots. Hotspots generally occur in congregate settings such as
16 bars, restaurants, and grocery stores where universal face masking is either not followed or worn
17 improperly, where screening for symptomatic or exposed individuals is rarely, if ever, done and
18 where less stringent cleaning protocols are followed. Hospitals, including the facility at issue,
19 utilize CDC approved cleaning procedures and follow CDC guidelines for PPE usage including
20 universal masking, eye protection and respirator use when appropriate. Furthermore, team
21 members self-screen daily and are subject to symptom screening and temperature check when
22 reporting to work. These are all risk mitigation efforts that do not occur in the general public.

1 Although it is counter-intuitive to many, a hospital in New Jersey is one of the safest places to be
2 during COVID due to the advanced safety protocols utilized.

3 14. As we learned more about COVID and how it is transmitted we modified or
4 created new COVID protocols and policies. The current protocols are based on the declining
5 numbers of COVID positives in Monmouth County and the other counties served by the HMH
6 network and were presented at the hearing as Employer Exhibits 7-10.

7 15. These protocols have been successful at protecting patients who were not COVID
8 positive, but were hospitalized nonetheless, as well as our team members. Our team members
9 wearing PPE are protected from the transmission of the virus, even though some are caring for
10 COVID positive patients. The protocols work when followed properly.

11 16. The proposed protocols include mandating social distancing between team
12 members and non-team members in the voting area, also referred to as the “bubble.” The voting
13 area is particularly appropriate because it provides for an open-air, but protected, area for voters
14 and non-team members. Given the size and layout of the ambulance bays, more individuals could
15 safely fit into the bays at one time, but for a higher degree of caution, I agree with the protocols
16 that permit no greater than eight individuals inside the bubble at any one time in order to
17 maintain appropriate social distancing.

18 17. Given the size of the adjacent lot where any line of voters would form, I
19 recommend that no more than 100 team members be in line at one time in order to ensure that
20 there is no temptation for congregation and that social distancing is maintained by voters. If
21 there were more than 100 team members in line, but proper social distancing was followed as
22 well as the donning of surgical masks, the risk would not increase. This is evinced by the State
23 of New Jersey’s mandate that permits up to 500 people in an outdoor area at one time. The

1 number of 100 is a conservative estimate as to the number of voters that could stand in the line at
2 once, not a hard number, and is based on the projections for team members that would be
3 arriving or departing their respective shifts per Doug Campbell's explanation of shift change.
4 Regardless of whether there are ten team members, or 100 in line, the importance of social
5 distancing and universal mask wearing should be emphasized.

6 18. Prior to entering the voting line I recommend utilizing simple screening questions
7 for voters regarding their current state including whether they have a fever of 100.4 or higher
8 and/or any symptoms of illness (eg. Loss of smell, cough, muscle aches, etc.,) whether they have
9 a household contact with anyone that is COVID positive. In addition to the symptom screening,
10 I recommend a temperature check. These requirements are no different than any team member
11 experiences upon entering work.

12 19. I also recommend that all voters utilize hand sanitizer prior to entering the line,
13 upon entering the bubble and upon exiting the bubble.

14 20. I note that the voters have been heroically coming to work since the beginning of
15 the pandemic and continue to do so on a daily basis. The overall infection rate in the State of
16 New Jersey, in Monmouth County, and at Jersey Shore University Medical Center have been on
17 a steady decline since mid-June and are currently at their lowest points. There would be no
18 increased risk for the team members participating in the election under the protocols proposed by
19 the Hospital.

20 21. For non-team members, the Hospital is prepared to provide face masks, a face
21 shield, and Plexiglas separators. These measures alone, when universally followed, provide a
22 safe environment. However, the Hospital is prepared to provide PAPR or CAPR apparatus as an
23 additional layer of protection, if desired by the non-team members. A PAPR is a Powered Air

1 Purifying Respirator. A CAPR is a Controlled Air Purifying Respirator. They are both
2 essentially helmets which consist of a self-contained breathing apparatus supplying the wearer
3 with a constant stream of positive outflow air. Additionally, the Hospital can provide N95 masks.
4 If the Hospital provides these items, a trained team member will need to demonstrate proper use
5 of the PPE. I further note that neither of these items is necessary in my medical opinion given
6 the extensive risk management protocols the Hospital is proposing for the election, however, if
7 the use of the apparatus adds a level of additional comfort and security to non-team members, the
8 Hospital will certainly make them available.

9 22. In regards to any team members that may be of high risk such as those with
10 cancer, an autoimmune disorder or that are pregnant, I would recommend a specified voting time
11 whereby less voters were present, but utilizing the same safety protocols proposed for the
12 majority of the voting group.

13 23. It is my medical opinion that participation in the election as proposed generates
14 no increased risk for any team member or non-team members that leave their homes to shop in
15 grocery stores, to pick up prescriptions, to take their children to soccer practice, participate in
16 outdoor dining, or any other routine life activities under the circumstances as currently exist with
17 regards to COVID rates and transmission.

I declare under penalty of perjury that the above is true and correct to the best of my
knowledge, information, and belief.

Executed on: September 10, 2020



Jerry Zuckerman, MD